

United States  
Circuit Court of Appeals  
For the Ninth Circuit.

J. S. CVITKOVIC and MARTIN BOSKIVICH,  
NIKOLA JANDRILOVICH and MARTIN  
BOSKOYCEH,

Appellants,

vs.

UNITED STATES OF AMERICA,

Appellee.

Transcript of Record.

Upon Appeal from the United States District Court for the  
Western District of Washington, Northern Division.

Filed

JAN 23 1930

PAUL P. OBRIEN,  
CLERK



United States  
Circuit Court of Appeals

For the Ninth Circuit.

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF COUNSEL.

JOHN F. DORE and F. C. REAGAN, Attorneys  
for Appellants,

1903 Smith Tower, Seattle, Washington.

ANTHONY SAVAGE and CAMERON SHER-  
WOOD, Attorneys for Appellee,

310 Federal Building, Seattle, Washington.

[1\*]

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(Wash. 9387)

United States District Court, Western District of  
Washington, Northern Division.

November, 1928, Term.

No. 40,097.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

J. S. CIVITKOVIC, *alias* JOE CIVITKOVIC,  
*alias* JOE CVIT, *alias* JOE SEVIT, *alias*  
JOE SWEET, E. P. PETROVICH, *alias*  
JOHN PETROVICH, MARTIN BOSKO-  
VICH, *alias* MIKE STEFANOV, NIKOLA  
JANDRILOVICH, *alias* NICK JANDERS,  
*alias* MIKE MUDRO, MARTIN BOS-  
KOYCEH, *alias* MARTIN BOSKOVICH,  
*alias* MARTIN BOSCOVIC, *alias* MARTIN  
LAPPENBUSH, *alias* JOHN BUTORICZ,  
and F. SABLJAK, *alias* MIKE PLSA,

Defendants.

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\*Page-number appearing at the foot of page of original certified  
Transcript of Record.

## INDICTMENT.

Vio. Sec. 37 Penal Code, Conspiracy to Violate the Act of Oct. 28, 1919, Known as the National Prohibition Act, and Vio. Secs. 3281 and 3282 R. S.

United States of America,  
Western District of Washington,  
Northern Division,—ss.

The Grand Jurors of the United States of America, being duly selected, impaneled, sworn, and charged to inquire within and for the Northern Division of the Western District of Washington, upon their oaths present: [2]

## COUNT I.

That J. S. CIVITKOVIC, *alias* JOE CIVITKOVIC, *alias* JOE CVIT, *alias* JOE SEVIT, *alias* JOE SWEET, EP. PETROVICH *alias* JOHN PETROVICH, MARTIN BOSKOVICH, *alias* MIKE STEFANOV, NIKOLA JANDRILOVICH, *alias* NICK JANDERS, *alias* MIKE MUDRO, MARTIN BOSKOYCEH, *alias* MARTIN BOSKOVICH, *alias* MARTIN BOSCOVIC, *alias* MARTIN LAPPENBUSH, *alias* JOHN BUTORICZ, and F. SABLJAK, *alias* MIKE PLSA (whose true and full names are to the Grand Jurors unknown), on or about the twentieth day of July, in the year of our Lord one thousand nine hundred and twenty-eight, within the Northern Division of the Western District of Washington, and within the jurisdiction of

this court, then and there being, did then and there knowingly, willfully, unlawfully, and feloniously combine, conspire, confederate and agree together, and with each other, and together with sundry and divers other persons to the Grand Jurors unknown, to commit certain offenses against the United States, that is to say, to manufacture and possess intoxicating liquor unlawfully and illegally for beverage purposes, to wit, whiskey, then and there containing more than one-half of one per centum of alcohol by volume, being then and there fit for use for beverage purposes, and to maintain a common nuisance, in violation of Sections 3, 6, and 21, of Title II of the provisions of the Act of Congress passed October 28, 1919, and known as the National Prohibition Act, all of which was done with the willful, unlawful, and felonious intent of violating the aforesaid provisions of the aforesaid Act. That said conspiracy was and is a continuing conspiracy, continuing from the 20th day of July, 1928, to the time of the presentment of this indictment.

#### OVERT ACTS.

And the Grand Jurors aforesaid, upon their oaths aforesaid, do further present, that after the formation of said conspiracy and in pursuance thereof, and in order to effect the object of the aforesaid conspiracy, and for the purpose of executing said unlawful conspiracy and agreement, the hereinafter mentioned parties, within the Northern Division of the Western District of Washington, and within

the jurisdiction of this court, then and there being, [3] did certain overt acts, that is to say:

1. That on or about the 20th day of July, 1928, at King County, Washington, in said division and district, said J. S. CIVITKOVIC, *alias* JOE CIVITKOVIC, *alias* JOE CVIT, *alias* JOE SEVIT, *alias* JOE SWEET, and E. P. PETROVICH, *alias* JOHN PETROVICH, did purchase all that part of the Southwest one-fourth (S. W. 1-4) of the Northeast one-fourth (N. E. 1-4) and all that part of Lot five (5), in Section nineteen (19), Township twenty-three (23) N. Range six (6) E. W. M., lying North of the Cedar River as it is now running in its present channel, in King County, Washington, known as the West place.

2. That on or about the 12th day of March, 1929, at King County, Washington, in said division and district, said MARTIN BOSKOVICH, *alias* MIKE STEFANOV, manufactured, approximately, one hundred *gallons* (100) gallons of whiskey.

3. That on or about the 12th day of March, 1929, at King County, Washington, in said division and district, said MARTIN BOSKOVICH, *alias* MIKE STEFANOV, and J. S. CIVITKOVIC, *alias* JOE CIVITKOVIC, *alias* JOE CVIT, *alias* JOE SEVIT, *alias* JOE SWEET, did possess, approximately, one hundred (100) gallons of whiskey.

4. That on or about the 7th day of March, 1929, at King County, Washington, in said division and district, said J. S. CIVITKOVIC, *alias* JOE CIVITKOVIC, *alias* JOE CVIT, *alias* JOE SEVIT,

*alias* JOE SWEET, and MARTIN BOSKOVICH, *alias* MIKE STEFANOV, did have and possess one (1) complete still of approximately four hundred fifty (450) gallons capacity.

5. That on or about the 7th day of March, 1929, at King County, Washington, in said division and district, said J. S. CIVITKOVIC, *alias* JOE CIVITKOVIC, *alias* JOE CVIT, *alias* JOE SEVIT, *alias* JOE SWEET, E. P. PETROVICH, *alias* JOHN PETROVICH, MARTIN BOSKOVICH, *alias* MIKE STEFANOV, NIKOLA JANDRILOVICH, *alias* NICK JANDERS, *alias* MIKD MUDRO, MARTIN BOSKOYCEH, *alias* MARTIN BOSKOVICH, *alias* MARTIN BOSCOVIC, *alias* MARTIN LAPPENBUSH, *alias* JOHN BUTORICZ, and F. SABLJAK, *alias* MIKE PLSA, fermented, approximately, four thousand (4,000) gallons of mash fit for distillation purposes. [4]

6. That on or about the 7th day of March, 1929, at King County, Washington, in said division and district, said J. S. CIVITKOVIC, *alias* JOE CIVITKOVIC, *alias* JOE CVIT, *alias* JOE SEVIT, *alias* JOE SWEET, and MARTIN BOSKOVICH, *alias* MIKE STEFANOV, did have and possess twelve (12) mash vats of five hundred gallons capacity each, one (1) 500-gallon cooling vat, fifteen (15) ten-gallon barrels, two (2) pressure tanks, four (4) burners, and, approximately, thirty (30) gallons of kerosene.

7. That on or about the 12th day of March, 1929, J. S. CIVITKOVIC, *alias* JOE CIVITKOVIC,

*alias* JOE CVIT, *alias* JOE SEVIT, *alias* JOE SWEET, and MARTIN BOSKOVICH, *alias* MIKE STEFANOV, in King County, Washington, in said division and district, did possess, approximately, one thousand (1,000) gallons of mash fit for distillation purposes.

8. That on or about the 12th day of March, 1929, said J. S. CIVITKOVIC, *alias* JOE CIVITKOVIC, *alias* JOE CVIT, *alias* JOE SEVIT, *alias* JOE SWEET, E. P. PETROVICH, *alias* JOHN PETROVICH, and MARTIN BOSKOVICH, *alias* MIKE STEFANOV, in King County, Washington, in said division and district, did possess, approximately, ninety (90) gallons of wine.

9. That on or about the 12th day of March, 1929, said J. S. CIVITKOVIC, *alias* JOE CIVITKOVIC, *alias* JOE CVIT, *alias* JOE SEVIT, *alias* JOE SWEET, MARTIN BOSKOVICH, *alias* MIKE STEFANOV, MARTIN BOSKOYCEH, *alias* MARTIN BOSKOVICH, *alias* MARTIN BOSCOVIC, *alias* MARTIN LAPPENBUSH, *alias* JOHN BUTORICZ, NIKOLA JANDRILOVICH, *alias* NICK JANDERS, *alias* MIKE MUDRO, and F. SABLJAK, *alias* MIKE PLSA, in said division and district, went to certain premises near Cedar Mountain known as the West Place, about two and one-half miles Northeast of Elliott Station, King County, Washington.

10. That on or about the 12th day of March, 1929, said J. S. CIVITKOVIC, *alias* JOE CIVITKOVIC, *alias* JOE CVIT, *alias* JOE SEVIT, *alias* JOE SWEET, E. P. PETROCICH, *alias* JOHN

PETROVICH, MARTIN BOSKOVICH, *alias* MIKE STEFANOV, NIKOLA JANDRILOVICH, *alias* NICK JANDERS, *alias* MIKE MUDRO, MARTIN BOSKOYCEH, *alias* MARTIN BOSKOVICH, *alias* MARTIN BOSCOVIC, *alias* MARTIN LAPPENBUSH, *alias* [5] JOHN BUTORICZ, and F. SABLJAK, *alias* MIKE PLSA, did maintain and conduct a common nuisance on the following described premises; all that part of the Southwest one-fourth (S. W. 1-4) of the Northeast one-fourth (N. E. 1-4) and all that part of Lot five (5), in Section nineteen (19), Township Twenty-three (23) N. Range six (6) E. W. M., lying North of the Cedar River as it is now running in its present channel, in King County, Washington, known as the West Place, in said division and district;

Contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

And the Grand Jurors aforesaid, upon their oaths aforesaid, do further present:

## COUNT II.

That J. S. CIVITKOVIC, *alias* JOE CIVITKOVIC, *alias* JOE CVIT, *alias* JOE SEVIT, *alias* JOE SWEET, E. P. PETROVICH, *alias* JOHN PETROVICH, MARTIN BOSKOVICH, *alias* MIKE STEFANOV, NIKOLA JANDRILOVICH, *alias* NICK JANDERS, *alias* MIKE MUDRO, MARTIN BOSKOYCEH, *alias* MARTIN BOSKOVICH, *alias* MARTIN BOSCOVIC, *alias*

MARTIN LAPPENBUSH, *alias* JOHN BUTORICZ, and F. SABLJAK, *alias* MIKE PLSA (whose true and full names are to the Grand Jurors unknown), on or about the twelfth day of March, in the year of our Lord one thousand nine hundred and twenty-nine, at about two and one-half miles northeast of Elliott Station, King County, Washington, and at certain premises known as the West Place, in the Northern Division of the Western District of Washington, within the jurisdiction of this court, and within the Internal Revenue Collection District of Washington, then and there being, did then and there knowingly, willfully, unlawfully, and feloniously carry on the business of a distiller of spirits, without having given bond as required by law; contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America. [6]

And the Grand Jurors aforesaid, upon their oaths aforesaid, do further present:

### COUNT III.

That J. S. CIVITKOVIC, *alias* JOE CIVITKOVIC, *alias* JOE CVIT, *alias* JOE SEVIT, *alias* JOE SWEET, E. P. PETROVICH, *alias* JOHN PETROVICH, MARTIN BOSKOVICH, *alias* MIKE STEFANOV, NIKOLA JANDRILOVICH, *alias* NICK JANDERS, *alias* MIKE MUDRO, MARTIN BOSKOYCEH, *alias* MARTIN BOSKOVICH, *alias* MARTIN BOSCOVIC, *alias* MARTIN LAPPENBUSH, *alias* JOHN BUTORICZ, and F. SABLJAK, *alias* MIKE PLSA



(whose true and full names are to the Grand Jurors unknown), on or about the seventh day of March, in the year of our Lord one thousand nine hundred and twenty-nine, at about two and one-half miles northeast of Elliott Station, King County, Washington, and at certain premises known as the West Place, in the Northern Division of the Western District of Washington, within the jurisdiction of this court, and within the Internal Revenue Collection District of Washington, then and there being, did then and there knowingly, willfully, unlawfully, and feloniously make and ferment, approximately, four thousand (4,000) gallons of a certain mash, wort, or wash, fit for distillation of spirits, on certain premises, to wit, the premises herein above described, not then and there a distillery duly authorized according to law; contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

ANTHONY SAVAGE,

United States Attorney,

PAUL D. COLES,

Assistant United States Attorney.

[Endorsed]: A true bill.

H. C. BELL,

Foreman Grand Jury.

ANTHONY SAVAGE,

U. S. Attorney.

[Endorsed]: Presented to the Court by the foreman of the Grand Jury in open court, in the pres-

ence of the Grand Jury, and filed in the U. S. District Court, Mar. 27, 1929. [7]

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[Title of Court and Cause.]

PLEA (JOE CIVITKOVIC).

Now on this 20th day of May, 1929, defendant Joe Civitkovic comes into open court and enters a plea of not guilty to the indictment. Said cause is continued to June 3, 1929, for assignment.

Journal No. 16, at page 874. [8]

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[Title of Court and Cause.]

ARRAIGNMENT AND PLEA (MARTIN BOSKOVICH).

Now on this 6th day of May, 1929, Jeffrey Heiman, Assistant United States Attorney, appearing for the plaintiff, defendant Martin Boskovich, *alias* Mike Stefanov, waiving the appointment of an attorney, comes into open court for arraignment and answers that his true name is the same. He enters a plea of not guilty. Said cause is continued to May 7, 1929, for assignment.

Journal No. 16, at page 823. [9]

[Title of Court and Cause.]

ARRAIGNMENT AND PLEA (NIKOLA JANDRILOVICH).

Now on this 6th day of May, 1929, Jeffrey Heiman, Assistant United States Attorney, appearing for the plaintiff, defendant Nikola Jandrilovich, *alias* Nick Janders, *alias* Mike Mudro, waiving the appointment of an attorney, comes into open court for arraignment and answers that his true name is the same. He enters a plea of not guilty. Said cause is continued to May 7, 1929, for assignment.

Journal No. 16, at page 823. [10]

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[Title of Court and Cause.]

ARRAIGNMENT AND PLEA (MARTIN BOSKOYCEH).

Now on this 6th day of May, 1929, Jeffrey Heiman, Assistant United States Attorney appearing for the plaintiff, defendant Martin Boskoyceh, *alias* Martin Boskovich, *alias* Martin Boscovic, *alias* Martin Lappenbush, *alias* John Butoricz, waiving an attorney, comes into open court for arraignment and answers that his true name is Martin B. Boskoyceh. He enters a plea of not guilty. Said cause is continued to May 7, 1929, for assignment.

Journal No. 16, at page 823. [11]

[Title of Court and Cause.]

VERDICT.

We, the jury in the above-entitled cause, find the defendant, Joe Cvitkovic, is guilty as charged in Count I of the indictment herein; and further find the defendant Martin Boskovich is guilty as charged in Count I of the indictment herein; and further find the defendant Nikola Jandrilovich is guilty as charged in Count I of the indictment herein; and further find the defendant Martin B. Boskoyceh is guilty as charged in Count I of the indictment herein, and further find the defendant Antone Sabljak not guilty as charged in Count I of the indictment herein; and further find the defendant Joe Cvitkovic is guilty as charged in Count II of the indictment herein; and further find the defendant Martin Boskovich is guilty as charged in Count II of the indictment herein; and further find the defendant Nikola Jandrilovich is guilty as charged in Count II of the indictment herein; and further find the defendant Martin B. Boskoyceh is guilty as charged in Count II of the indictment herein; and further find the defendant Antone Sabljak not guilty as charged in Count II of the indictment herein.

G. L. EKSTEDT,  
Foreman.

COUNT 3.

Guilty—Joe Cvitkovic.

Martin Boskovich.

Nikola Jandrilovich.

Martin B. Boskoyceh.

Not Guilty—Antone Sabljak.

[Endorsed]: Filed Oct. 4, 1929. [12]

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[Title of Court and Cause.]

SENTENCE (JOE CVITKOVIC).

Comes now on this 7th day of October, 1929, the said defendant, Joe Cvitkovic, into open court for sentence, and being informed by the Court of the charges herein against him and of his conviction of record herein, he is asked whether he has any legal cause to show why sentence should not be passed and judgment had against him, and he nothing says save as he before hath said. Wherefore, by reason of the law and the premises, it is CONSIDERED, ORDERED AND ADJUDGED by the Court that the defendant is guilty of manufacturing and possessing intoxicating liquor as charged in Count 1 of the indictment, of knowingly, wilfully, unlawfully and feloniously carrying on a business of a distiller of spirits as charged in Count 2 of the indictment, and of making certain spirits, as charged in Count 3 of the indictment, all in violation of Section 37, Penal Code, conspiracy to violate

the Act of October 28, 1919, known as the National Prohibition Act, and violation of Sections 3281 and 3282, Revised Statutes, and that he be punished by being imprisoned in the United States Penitentiary at McNeil Island, Pierce County, Washington, or in such other place as may be hereafter provided for the imprisonment of offenders against the laws of the United States, for the term of eighteen months at hard labor and to pay a fine of \$1,500.00 and costs on Counts 1, 2, and 3 of the indictment taken together. And the said defendant, Joe Cvitkovic, is hereby ordered into the custody of the United States Marshal to carry this sentence into execution.

Judgment and Decree, Vol. 6, page 371. [13]

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[Title of Court and Cause.]

SENTENCE (MARTIN BOSKOVICH).

Comes now on this 7th day of October, 1929, the said defendant, Martin Boskovich, into open court for sentence, and being informed by the Court of the charges herein against him and of his conviction of record herein, he is asked whether he has any legal cause to show why sentence should not be passed and judgment had against him, and he nothing says save as he before hath said. Wherefore, by reason of the law and the premises, it is CONSIDERED, ORDERED AND ADJUDGED by the Court that the defendant is guilty of manu-

facturing and possessing intoxicating liquor as charged in Count 1 of the indictment, of knowingly, wilfully, unlawfully, and feloniously carrying on a business of a distiller of spirits, as charged in Count 2 of the indictment, of making certain spirits, as charged in Count 3 of the indictment, all in violation of Section 37, Penal Code, conspiracy to violate the Act of October 28, 1919, known as the National Prohibition Act, and violation of Sections 3281 and 3282, Revised Statutes, and that he be punished by being imprisoned in the United States Penitentiary at McNeil Island, Pierce County, Washington, or in such other place as may be hereafter provided for the imprisonment of defenders against the laws of the United States, for the term of thirteen (13) months at hard labor and to pay a fine of \$1,000.00 and costs on all three counts of the indictment taken together. And the said defendant, Martin Boskovich, is hereby ordered into the custody of the United States Marshal to carry this sentence into execution.

Judgment and Decree, Vol. 6, page 372. [14]

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[Title of Court and Cause.]

SENTENCE (NIKOLA JANDRILOVICH).

Comes now on this 7th day of October, 1929, the said defendant, Nikola Jandrilovich, into open court for sentence, and being informed by the Court of the charges herein against him and of his conviction of record herein, he is asked whether he has any

legal cause to show why sentence should not be passed and judgment had against him, and he nothing says save as he before hath said. Wherefore, by reason of the law and the premises, it is CONSIDERED, ORDERED AND ADJUDGED by the Court that the defendant is guilty of manufacturing and possessing intoxicating liquor as charged in Count 1 of the indictment, of knowingly, wilfully, unlawfully, and feloniously carrying on a business of a distiller of spirits, as charged in Count 2 of the indictment, of making certain spirits, as charged in Count 3 of the indictment, all in violation of Section 37, Penal Code, conspiracy to violate the Act of October 28, 1919, known as the National Prohibition Act, and violation of Sections 3281 and 3282, Revised Statutes, and that he be punished by being imprisoned in the United States Penitentiary at McNeil Island, Pierce County, Washington, or in such other place as may be hereafter provided for the imprisonment of offenders against the laws of the United States, for the term of thirteen (13) months at hard labor and to pay a fine of \$1,000.00 and costs on all three counts of the indictment, taken together. And the said defendant, Nikola Jandrilovich, is hereby ordered into the custody of the United States Marshal to carry this sentence into execution.

Judgment and Decree, Vol. 6, page 372. [15]



[Title of Court and Cause.]

SENTENCE (MARTIN B. BOSKOYCEH).

Comes now on this 7th day of October, 1929, the said defendant, Martin B. Boskoyceh, into open court for sentence, and being informed by the Court of the charges herein against him and of his conviction of record herein, he is asked whether he has any legal cause to show why sentence should not be passed and judgment had against him, and he nothing says save as he before hath said. Wherefore, by reason of the law and the premises, it is CONSIDERED, ORDERED AND ADJUDGED by the Court that the defendant is guilty of violation of Section 37, Penal Code, conspiracy to violate the Act of October 28, 1919, known as the National Prohibition Act, and violation of Sections 3281 and 3282, Revised Statutes, and that he be punished by being imprisoned in the United States Penitentiary at McNeil Island, Pierce County, Washington, or in such other place as may be hereafter provided for the imprisonment of offenders against the laws of the United States, for the term of thirteen (13) months at hard labor and to pay a fine of \$1,000.00 and costs on all three counts of the indictment, taken together. And the said defendant, Martin B. Boskoyceh, is hereby ordered into the custody of the United States Marshal to carry this sentence into execution.

Judgment and Decree, Vol. 6. page 372. [16]

[Title of Court and Cause.]

MOTION FOR NEW TRIAL.

Come now Martin Boskovich, J. S. Cvitkovic, Nikola Jandrilovich, and Martin Boskoyceh, defendants in the above-entitled cause, and each of them, and moving separately and not collectively, move for a new trial of said cause on each and every count of the indictment herein, on the following grounds:

1. That the verdict is contrary to law and the evidence.
2. Errors of law occurring at the trial and duly excepted to be the said defendants at the time.
3. That there is not sufficient evidence to sustain a verdict against these defendants.

JOHN F. DORE,  
FRED C. BROWN,  
Attorneys for Defendants.

Received a copy of the within motion this 4 day of Nov., 1929.

ANTHONY SAVAGE,  
Attorney for Pltff.

[Endorsed]: Filed Nov. 4, 1929. [17]

[Title of Court and Cause.]

### HEARING ON MOTION FOR NEW TRIAL.

Now on this 18th day of November, 1929, Cameron Sherwood, Assistant United States Attorney, appearing for the plaintiff, and F. C. Reagan, Esq., appearing as counsel for the defendant, hearing is had on motion for new trial and the said motion is denied. A further stay of execution of one week is granted.

Journal No. 17, at page 627. [18]

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[Title of Court and Cause.]

### BILL OF EXCEPTIONS.

BE IT REMEMBERED, that on October 3, 1929, at the hour of 10:00 o'clock A. M., the above-entitled cause came on regularly for trial in the above-entitled court before the Honorable George M. Bourquin, Judge thereof.

The plaintiff appearing by Anthony Savage, United States Attorney, and by Cameron Sherwood, Assistant United States District Attorney.

The defendants appearing in *in* person and by their attorneys John F. Dore, Fred C. Brown and Joseph Wicks.

A jury having been *jury at* regularly impanelled and sworn to try the cause, and the United States District Attorney, having made a statement to the jury, and John F. Dore, counsel for the defense, having made a statement to the jury. [19]

The following evidence was thereupon offered:

TESTIMONY OF MAURICE SMITH, FOR THE  
GOVERNMENT.

MAURICE SMITH, a witness produced on behalf of the Government, being duly sworn, testified as follows:

## Direct Examination.

(By Mr. SAVAGE.)

I am assistant administrator of prohibition work. On March 7, 1929, I was at the West farm together with Agents Dunning and Cunningham. We found a couple hundred feet or more from the road a dug-out or still-house, and in it was a very large still completely set up and warm, and twelve five hundred-gallon vats, eight of them filled with mash, some of them still fermenting and others ready to run. I determined the mash was ready for distillation. There was a large hogshead cut in two, which is a sort of a tub, filled with moonshine whiskey. I tested it and found it was moonshine whiskey. and there was about 100 gallons of it. There were five-gallon cans filled with either kerosene or gasoline. I did not see any of the defendants there at that time. I returned to these premises again on the morning of the 8th, being accompanied by Agent Cunningham. To the east of this place is a water system that supplies it. About eight o'clock in the morning, Martin Boskovich came out of the house and went up to the still location. To get into this still he had to remove some evergreen trees that were stuck up in the ground. He went back to his

(Testimony of Maurice Smith.)

house and soon smoke came out of the house. During the day he went to the still at intervals of about an hour. At one time he carried something down to the garage, but generally he returned to the house. About dark I saw Bozkovich carrying something down to the garage but I could not tell what it was. We could hear a noise in the garage similar to the sound that barrels or kegs make when being moved. I was out there again between the 8th [20] and the 11th, but the exact date I could not tell. We saw none of the defendants at that time and saw nothing except about five o'clock in the morning automobile lights came out of the garage and turned and then the lights went out. On March 11th Agent Dunning and I were there, and we were joined by Mr. Corwin and, I think, Wilson or Cunningham.

Agent Dunning left me to go up to the still-house. He was gone a little while when the dog was aroused and made a great fuss for an hour. When he got back he reported what he had found—the condition at the still, and then I directed him to go and phone the office, and he was directed to go to a farmhouse near Elliott Station. I watched the premises for a light but no light came from there, but down on the flat I could see a light, and then very shortly a large touring car drove in from the Cedar Mountain direction. There is a very sharp angle at the intersection of the Cedar Mountain road where it goes toward Seattle, and going back east on the Maple Valley road you would have to almost make a switch-back, but not quite. This

(Testimony of Maurice Smith.)

car came down into the Maple Valley road and then switched back to the east on the Cedar Mountain road and then switched back on the Maple Valley road past Mr. Corwin and his crew. I then walked over in the direction of the still and was met by Agents Dunning, Cunningham, and Sadler. Sadler and I left and I returned with him just before noon and found all of the defendants in charge of the agents under arrest. Martin Boskovich said that he had been on the premises about a month. He said he had a dozen chickens and a cow on the place. He also said that he had been recently married. I told him we had visited the place before and had seen him working and he said yes, he had been running the still. He said the still was his and he was getting ready to abandon it and move on and that the still was on the place when he came there. He said he had learned to run a distillery in the old country.

He did not give the name of Boskovich at that time. I cannot recall what name he gave. I asked him about the car which had left the premises that night, and asked him if he had passed me in his car, and he said, no. [21] I said, "You drove out that road that morning on the Maple Valley road," and he said, "Yes." I asked what he did with the automobile and he refused to answer. I also talked with Sabljak. He accounted for the presence of his car in the vicinity by saying that he had started for Black Diamond with a truck for a load of furniture and that he stopped there to get water

(Testimony of Maurice Smith.)

for his car. I spoke to him about the Maple Valley road being surfaced to Black Diamond and that this was a gravel road more than a half a mile to the north. He didn't make any [22] explanation of this. He did not answer how he happened to be on a gravel road to the north leaving the direct road to Black Diamond.

He could not give me the name of the man from whom he borrowed the truck, nor where he expected to get the furniture. I examined the radiator and it was not in need of water. I had a conversation with Jandrilovich and he said he was a stranger in that part of the country. He said he had been to Renton and had met up with the defendant Boskeyceh, and was looking for work. He said he was a miner looking for work. He said that he knew no one in Seattle, having no residence there, and had no friends there nor any acquaintance in the vicinity. [23] The defendant Boskoyceh said that he had been to Cumberland and that he had returned from Cumberland with his partner "Janders." They had stayed up all night and had built a fire alongside of the road to keep themselves warm. They had gone to the Cedar Mountain Mine or in that vicinity looking for work.

Mr. SAVAGE.—Jandrilovich, your Honor, is known as Janders.

Janders said he was a stranger in Seattle and in the vicinity. Boskoyceh said he had been in Seattle a time or two but knew no one and he gave no address there. He said that they were going along the

(Testimony of Maurice Smith.)

road that morning and had not had their breakfast and stopped in at the place where they were arrested and were attempting to get something to eat. They both had on light shoes. They were not muddy and dirty, but were in a clean condition, and they were not working shoes. I heard Cvitkovic say that his uncle told him that if he ever was arrested not to say anything. He would not give his name. Would not tell where he was from nor where he was going. Cvitkovic had on a very good suit of clothes. I examined the pockets for a name mark and on the inside coat pocket I found a tailor's tag with the name Joe Sweet. That was the first information we had as to his identity, and that was the name under which Civitkovich was known in Seattle.

It took a large crew to carry this still off the place. The still was probably six feet one way, quite high and square. [24] It ran between four and five hundred gallons capacity. The mash drained from the still into a receptacle,—a five hundred gallon tank. From that there was a pipe leading to the south probably three or four hundred feet down into a cess-pool along buildings that lie to the south of the new residence and the still location. The cess-pool was filled with mash. I examined an old house that was on the place and I tore up some of the planks, and back a few feet was a cache wherein I found nine ten-gallon kegs of wine. This was all on the H. S. West farm.



(Testimony of Maurice Smith.)

Cross-examination.

(By Mr. DORE.)

The Cedar Mountain Road, a gravel road, cuts through the place. Part of the farm is on one side of the road and part of the farm is on the otherwise. The Cedar Mountain road is approximately a mile from this West farm. From the paved Maple Valley road, this farm is in the neighborhood of three-quarters of a mile. Until the 12th of March the only man I ever saw on the place was Martin Boskovich. I never saw any of the other defendants on the place until after I saw them under arrest. I never saw Joe Sweet on the place before the arrest. I never saw Janders until after he was arrested, and likewise Boskeyceh. I never saw them before that, and I likewise never saw Sabljak until after he was arrested. The automobile I was speaking about on the morning of the 12th, I did not see that on the West place. The nearest I saw it to the West place was probably more than half a mile on the Cedar Mountain road.

[25]

TESTIMONY OF EARL CORWIN, FOR THE  
GOVERNMENT.

EARL CORWIN, a witness produced on behalf of the Government, being duly sworn, testified as follows:

Direct Examination.

(By Mr. SAVAGE.)

I am a federal agent. The H. S. West ranch is

(Testimony of Earl Corwin.)

about three and a half miles east of Renton on the Maple Valley road. I was out there on March 8th with Mr. Smith and Agent Cunningham. I drove by the place in an automobile and let them off there. I continued on that road to where it intersects the Maple Valley highway. At a point about opposite the Renton airport I was overtaken by a Studebaker touring car with disc wheels bearing license No. 156-956. I was traveling at about 45 miles an hour and this car went away from me at a speed of about 25 or 30 miles an hour. I followed it towards Seattle. The car was very heavily loaded and the springs were flattened out on it. The car went into the Blue Ribbon Garage. I passed the Blue Ribbon Garage got out of my car, and returned on foot. I saw a Ford touring car with the side curtains down on it very heavily loaded leave the garage and go up Jackson Street and turn west on Jackson Street. I could not tell who was driving the Studebaker touring car. I could not tell what was inside of the Studebaker touring car.

On March 12th I drove straight up the Maple Valley highway, about half a mile from the intersection of the Maple Valley highway and the Cedar Mountain road. At a point possibly one hundred yards east of the intersection of the Cedar Mountain road we met a large touring car traveling at an excessive rate of speed in an easterly direction. I gave the agent certain instructions and returned to Seattle, arriving at the prohibition office at six-

(Testimony of Earl Corwin.)

thirty A. M. I looked in the telephone directory under the name of Joe Civitkovic and Joe [26] Sweet and found no telephone listed. I looked for a telephone under the name of Martin Boskoyceh and found the phone number to be Beacon 2001. I called the number and a woman answered. I asked if Martin was there and the woman answered, "Just a minute." I heard a man's voice on the phone, and I said, "Is this Martin?" he said, "Yes." I talked to Martin Boskoyceh afterward. It was his voice. I said, "I am a friend of Joe's and Joe is going to have some serious trouble. I want to get word to him. I want to get his telephone number." He said, "Who are you?" I said, "I can't tell you that, but I must get word to Joe right away." He hesitated for a moment and then said, "Joe's telephone number is Rainier 5626." I was able to identify the voice that I talked to that morning. I called Rainier 5626 and a man answered the phone. I said, "Hello. Is this Joe?" And he said, "Yes." I said, "Joe, this is a friend of yours and I have got some bad news for you." He said, "What is it?" I said, "Last night my girl was working in a dance-hall down on the skid road, and an Italian fellow from Tacoma came down and took her out of the dance-hall and got her drunk and when I came home this morning I beat her up and she told me she had been out with this Italian and the Italian had told her that he had located your still and was going to give it to the Federals this morning." He

(Testimony of Earl Corwin.)

said, "Located my still?" And I said "Yes." And he said, "Which one?" And I said, "The one in Maple Valley." And he uttered an oath and slammed up the receiver. I am able to identify the voice as that of Joe Cvitkovic. I have known him before and heard him talk a number of times and talked to him within a few hours of that time at the still. At ten o'clock I went out to the still on the H. S. West place and found all of the defendants under arrest. I asked Martin Boskovich his name and he said it was Mike Stevanov. I asked him if he lived on the place, and [27] he said, "Yes, for about a month." He had bought this place, and when he moved on the place he found the still there with the mash all set in a tank. He said that there was about 3,000 gallons of mash and that he ran off about two thousand gallons of mash, and he said that he had made a large quantity of whiskey and sold it in Seattle. He said that morning he had decided to quit making whiskey and he had dumped one thousand gallons of mash and fifty-five gallons of whiskey. He said nobody had been on the place except himself and that he did not know any of the other defendants. He said he had bought supplies in Seattle and taken them out to the place. The defendant Sabljak gave the name of Mike Plsa. I found a tailor's mark in his inside coat pocket with the initials F. S. on it. He said the tailor must have made a mistake. He said that a friend of his had given him a truck to go to Black Diamond and get a load of furniture. He

(Testimony of Earl Corwin.)

did not know his friend's name and did not know where he lived. He said he did not know where he was going to get the furniture in Black Diamond but when he got up there he would find out. He did not know the man's name he was going to get it from. He stated that he did not know any of the other defendants.

This was not the regular road to Black Diamond. He was probably a mile and a half out of his way on the gravel highway. He said, however, that he had heard about them all; that when he saw them in Seattle he knew who they were, but he did not have any acquaintance with them. Jandrilovich stated his name was Mike Mundro. He said he had been raised over around Cle Elum and he came over on this side of the mountains looking for work and had spent the night in Renton. He had left Renton about daybreak with a friend of his and drove to the Cedar Mountain mine, which mine is marked "E" on the diagram. He said he was going there to look for work. He said he was unable to obtain any work at the mine, and he started to walk back to Renton on the [28] gravel road. On the road he said he had met Boskoyceh and they walked along on the road together until they got opposite the West ranch when he was hungry and wanted something to eat. He said that he had some breakfast before he left Renton with a friend of his in the restaurant. He said that he opened the gate and walked into the place and that he got about halfway into the enclosure and happened to

(Testimony of Earl Corwin.)

think they might have a mean dog so he turned around and started to run out. At that time Agent Dunning, who was there, said, "You were hidden behind a tree over here on the trail that leads to the still." Jandrilovich said, "No, I wasn't hiding behind that tree, I was hidden behind another tree," indicating another tree higher up the trail. Finally, he admitted that he had been hiding behind the tree as indicated by Dunning. I called his attention to the fact that he had on a pair of new tan Oxfords, and asked him how he had walked up the road without getting his shoes dirty and he said he didn't know. He said that on the road between the Cedar Mountain mine and the intersection at the West place he had seen one car, a Ford Sedan. Mr. Dunning said, "You got out of that car when it stopped here in front of the place." And he said, "No, we were never in that car at all." He said, "The only time we saw the car *when* when it went past us on the road." Boskoyceh, the man that was with Jandrilovich said that he had been up working at Cumberland and that he had decided to come down to Seattle to see if he couldn't get work there. That he left Cumberland the evening before the evening of the 11th with Jandrilovich and they had walked all night down the railroad track from Cumberland. He stated that they had got cold during the night and had built a fire alongside of the railroad track and sat down to warm themselves for about an hour. He said about daylight they had arrived at the Cedar Mountain mine

(Testimony of Earl Corwin.)

[29] and asked for work and were unable to obtain any work and continued down the road until they got to the H. S. West place where they decided to go in and get something to eat. Boskoyceh had on a new pair of black shoes and there wasn't any sign of dust, dirt or discoloration on the shoes. He said that he was a transient, unmarried, and lived wherever he happened to be, and slept wherever he happened to be. I recognized him as a man I had known for a long time under the name of Martin Lappenbush. When we first went to the place, the defendant Dvitkovic refused to make any statement whatever. He said he had instructions never to say a word if he was ever arrested and he refused to give his name. When Mr. Smith found the name Joe Sweet in his pocket, he did state that his name was Joe Cvitkovic. He said that he had worked in Seattle as a cook and that for over a year he had worked at the California Oyster House on Third Avenue. Later he denied he had ever cooked there. He said, "Yes, I lied; I never worked at the California Oyster House, but I was working in a restaurant down at 511 King Street," and later on he admitted he had never worked there. He said his salary during the last six or seven years had been seventy or eighty dollars a month. He said, "The only car I have is the car I drove up there this morning on the Maple Valley highway, a Ford Sedan." I said, "Why, Joe, isn't it a fact that you have a brand new Cadillac sedan?" And he said, "I haven't got that. I

(Testimony of Earl Corwin.)

bought that for my wife.” I said, “Isn’t it a fact that you also have got several Buick cars?” And, after considerable argument he admitted he had bought in the last couple of years a number of Buick cars. He stated that the Ford sedan he had been in that morning belonged to a man named Mike Loquish. He said he had spent the night in Seattle gambling. That he had taken Mike Loquish home in the [30] vicinity of Smiths Cove, and then had driven down to Seattle and back again to Smiths Cove and picked up Mike Loquish and left him near the corner of 12th and Jackson. That he had then taken the Ford Sedan out to his home at 9311 51st Avenue South where he *he* stayed for a little while, and then that he he had started for Issaquah. I called to his attention that there was another paved highway direct from Renton to Issaquah. He said, “I just decided to go out and spend some time in the woods this morning.” He said that there were several good roads from the Maple Valley road to Issaquah and he didn’t know which one to take. I called his attention that they were all muddy and he said he could get through them some way. It took four men to carry the still from the place. It was a very heavy affair and they staggered with it.

Government’s Exhibit 1 is the tailor mark that was removed from the suit of Sabljak.



(Testimony of Earl Corwin.)

Cross-examination.

(By Mr. DORE.)

The only time that I ever saw any of these defendants on the West place was after they were arrested. The Renton airport that I spoke about is about five miles from the West farm. It is on the main highway between Seattle and Auburn. I didn't see who was in the automobile, nor did I see what was in it. I couldn't see who was driving the Ford that came out of the Blue Ribbon Garage. I didn't see the license number on it and I didn't see what was in it. The conversation I had when I called up the telephone number Rainier 5626 was I asked if Joe was there, and if this was Joe, and a man's voice answered and he said, "Yes." I said, "This is a friend of yours, Joe, and I have got some bad news for you," and he said, "What is it?" I said I had a girl [31] who worked in a dance-hall down there and she had been out the night before with the Italian from Tacoma, and he got her drunk, and when she came home that I beat her up, and she had told me that she had been out with this Italian named Frank from Tacoma, and that Frank had told her that he had found your still,—meaning Joe's still,—and the man's voice said, "Which still?" I recall that he said, "which one?" and he uttered an oath when I told him which one. He said, "God damn." When I asked him, "Is this Joe?" He said, "Yes."

Q. When you asked, "Is this Joe?" He said, "Yes"?

A. Yes.

(Testimony of Earl Corwin.)

Q. So the man said, "Yes, which one?" and these two blasphemous words?      A. Yes.

Redirect Examination.

(By Mr. SAVAGE.)

I assumed that the still had been there for four or five months.

TESTIMONY OF DANIEL E. DUNNING, FOR  
THE GOVERNMENT.

DANIEL E. DUNNING, a witness produced on behalf of the Government, being duly sworn, testified as follows:

(By Mr. SAVAGE.)

I have been a prohibition agent since 1925. I was first on the West farm on March 7th with agent Cunningham, and we found a still in a dugout, mash, kerosene and about one hundred gallons of moonshine whiskey. There were about four thousand gallons of mash, and the still was a four or five hundred gallon still. In the garage was a Studebaker automobile bearing the number 156956. There were some kerosene cans in the garage. They were identical with the cans up at the still. From the car emanated the odor of moonshine. The mash was fit for distillation, and the whiskey was moonshine whiskey. The garage was right on the road. On the evening of March 11th, I visited the still again [32] with Agent Smith. There was between fifty and sixty gallons of moonshine and one thousand gallons of mash. The other three

(Testimony of Daniel E. Dunning.)

thousand which was there was gone. Agent Cunningham and I took a position upon the hill where we could observe the dugout, and dwelling, the garage and the road. About 7:10, a Nash car, license No. 158174 drove up. The defendant Boskovich got out, came out of the garage, and went up to the house. He built a fire in the house, and about five minutes later went up to the still. I mean Martin Boskovich. When he went into the stillhouse, we could hear thumping around the vats and barrels and finally heard a barrel dump, then we could hear him working again, apparently with a wrench on metal. We waited I should say twenty-five or thirty minutes and agent Cunningham went around to the back of the dugout and I went to the front of the dugout and I served a search-warrant on Boskovich and placed him under arrest. At that time he was dismantling the burners. The mash had been dumped by boring holes in the staves. The moonshine which was there in the morning had been dumped. The barrels had been dumped over and the kegs, and the dome taken off the still. The still was partly dismantled. About the same time I observed a Reo truck coming from the West down the road. I stopped right down by the garage. The automobile came to a stop and the defendant Sabljak, who gave his name as Plsa, had taken off his overcoat and shook it out and laid it on the seat of the truck. The truck at that time was backed up to a little wire fence which runs about fifty feet to the east of the garage. The

(Testimony of Daniel E. Dunning.)

road at this place is wide. The truck could have parked in the road without obstructing travel. I walked over to him and said, "You got up here in time to get pinched," and he didn't say anything. There was the siftings of corn sugar in the truck. Corn sugar is used in making moonshine whiskey. I said, "Go right up to the still-house [33] and we will wait up there for the other fellows and get them when they come out," and he said, "All right." He walked back of the truck and crawled through the fence and started up the trail to the still-house. I did not point out to him the trail and the still-house. When we got about halfway up to the still-house I heard a car coming from the west. I had him step behind a tree, and I saw one of the new Ford sedans driving from the west to the east, and he drove to a point east of the garage, stopped and turned around and started back to the west. As they passed the garage going to the west, the rear door opened and two men stepped out. The men were Boskoyceh and Mundro, the names they gave out at that time, and they started up the hill. They ran and jumped over the stone wall which is about two and one-half feet high, and ran around to the back of the garage and started up the trail towards the still. They saw *came* me, and Jandrilo-vich stepped behind a tree and looked at me. I stepped out on the other side of the tree which I was behind and saw the driver of the car reach over the back seat and close the rear door of the sedan that they had left open. The driver of that

(Testimony of Daniel E. Dunning.)

car was Joe Sweet, or Joe Cvitkovic. There was no license on the back of the car at all. The back of the car was splashed with mud. Jandrilovich had stepped behind a tree. As I stepped out to take a look at Sweet, he started to run back down toward the road. I said, "What is the matter with you, why don't you get up here and get this still moved out before the officers come out, or we will all get in jail." With that he stopped, and I said, "Let's get this still moved before the law comes out and gets us all in jail. Let's go up and move it," and he said, "All right," and turned around and started running up the hill. As he ran up past me, I said, "What is the matter with you? Didn't you want to get this still moved"? He said, "I am coming; I am coming." He ran up and I closed in behind them then and followed them up. As I got practically up to the still I told them who I was, that I was [34] a federal officer, and that they were under arrest, and to go on up to the still. Agent Cunningham and I handcuffed the four men whom we had, two and two. I said to Jandrilovich, "Well, I pulled a pretty fast one on you that time, didn't I?" and he said, "You bet you did." I went down to the garage and took the Nash and went down to a farm-house near Elliott Station. I telephoned assistant administrator Smith at his home and told him what had happened and started back. As I drove out from this farm-house, I saw a Ford sedan coming from the east on the Maple Valley road. At a point which would be just to

(Testimony of Daniel E. Dunning.)

the left of the draw there, there is a schoolhouse on the side of the Maple Valley road, and the car turned into the driveway at this schoolhouse and then backed out into the road and started to the east. As I drove up I recognized that as the car which had let the two men out, and the driver as the man who was driving the car at the time the two men got out. The car did not have a rear license plate on it. As I drove up alongside of him he stepped on the gas to drive on by, and pulled over in front, and closed in on him and he kept slowing down, still trying, and finally he just nicked the center of the car I was driving before he would stop. I showed him my commission and I asked him his name and he said, "I won't tell you." I said, "Let us see your driver's license." He said, "I haven't any driver's license." I said, "Don't you know it is the law that you should have a driver's license?" He said, "That don't make any difference." I said, "All right, come out and get in this other car and I will take you back up to where the still is," and he said, "No, I am not going to get out of the car." I said, "I will have to take you out." He said he wouldn't get out, and I reached over and took hold of him by the collar, and he said, "All right, I will get out." That was Joe Sweet. He said, "Where are you going to take me?" I said, "Back up to the still." He said, "I have never been up [35] there before." I said, "Well, we will find out later whether you have or have not." He said he had never been to that

(Testimony of Daniel E. Dunning.)

place before; never had anything to do with the place, and didn't own the still. He would not say why he was there with his automobile.

Martin Boskovich said he owned the West farm, that he had bought it about a month before from a real estate man but could not name the real estate man. He said he had found the still on the place at the time he bought it, and also six thousand gallons of mash. He said he had run the mash and made liquor. He said he had got rid of some of the whiskey. He said he had learned how to operate a still in the old country. Mr. Corwin told him that he had followed him in over Rainier Avenue, and he said, yes, that he had gone into that garage. He said that he took whiskey in.

“But I do not believe that the man at that time just understood about hauling the whiskey in.”

Sabljak said that he was on the way to Black Diamond, that he had borrowed the truck from a friend of his. He did not know what his friend's name was. That he went to Black Diamond to get a load of furniture. He said he did not know where he was going to get the furniture in Black Diamond, but he would find out after he got there. He said he did not know where he was going to take it when he got back to Seattle, but he stated his friend would tell him where to take it. He said that he got the motor hot and he went in on the dirt road to get some water. There was water in the radiator. I examined the radiator later on and it was practically full of water.

(Testimony of Daniel E. Dunning.)

Jandrilovich said he had stayed in Renton the night before and that he was a miner and a transient, and that the last permanent address he had was in Roslyn some time in the fall before, I believe in September, 1928. That he got a cup of coffee in the restaurant that morning and started to walk toward the mine, to get some work, [36] and some friend of his had overtaken him and hauled him up as far as Cedar Mountain. That he tried to get work there and could not and he started walking back toward Renton. I am not sure whether he said that he had met this other man at the mine or whether he had started with this other man. But, anyway, they had met that morning, and were walking back toward Renton and had decided to come into this place to get something to eat. I asked him why he did not use the gate, and he said, "Well, it was a little fence and easy to get over." I asked him why he did not go up to the house, and he said he didn't know. Instead of going up to the house, he went around back of the house and started up toward the trail to the still. He had a pair of light tan oxfords, practically new. They were not stained, nor did they show the marks of walking. I might say that the road east of there was muddy, especially in the lower places.

The truck had a solid built body on it about three feet high, painted black. It had a rear end gate that closed up so that you could not see inside of it at all from the outside. They had a canvas tarpaulin that could be used to cover the top.



(Testimony of Daniel E. Dunning.)

The still, in my judgment, had been there a few months. Government's Exhibit Two is the dome of the still.

I reported the number of the Studebaker car to Field Agent Corwin.

Government's Exhibit Three, I first saw in the Ford car that Joe Cvitkovic was driving on the morning of the 12th. It was in the right rear pocket. On March 13th I went to Box 84 on the Issaquah road, near Issaquah. I was with Agent Sadler, Bell and Cunningham, and I saw the Studebaker car, 159-956 in the garage. That was March 13th. That was the home of Nick Janders, or, Jandrilovich. I made a check of the tire treads on the car that Joe Cvitkovic was in. They were weather treads. I compared them [37] with the tire treads on the road near the West farm. The weather tread tire is a form of the rubber that makes a different imprint. The construction is different.

“Q. I understood you to say this morning when you were talking to Martin Boskovich about whiskey that you did not think the man understood what you were talking about, didn't you?

A. At one particular instance I don't believe that he did, counsel, when he entered. I want to give him the benefit of that doubt.

Q. What was it you do not think he understood?

A. I don't think he understood that Mr. Corwin meant that he had whiskey in the car when he brought it in that morning.

(Testimony of Daniel E. Dunning.)

Q. On the morning of the—

A. The morning of the eighth.

Q. The morning of the eighth?

A. Yes, when Mr. Corwin followed him in.

Q. Was that the time that the car went to this Blue Ribbon Garage?     A. Yes, sir.

Q. You do not think he understood the conversation?

A. I do not think he understood parts of it at that time.”

Sabljak was arrested at 7:15 in the morning.

#### TESTIMONY OF B. V. CUNNINGHAM, FOR THE GOVERNMENT.

B. V. CUNNINGHAM, a witness produced on behalf of the Government, being duly sworn, testified as follows:

##### Direct Examination.

(By Mr. SAVAGE.)

I am familiar with the West farm. I am a federal prohibition agent. On March 7th, I found in a dugout on the West farm a still completely set up and round barrels containing mash. There was about four thousand gallons of mash. There was about one hundred gallons of moonshine. I tested the moonshine and tested the mash. The mash was fit for distillation. [38]

In the garage on the place was a Studebaker touring car bearing license No. 156-956. There was a number of kerosene cans. I reported the number

(Testimony of B. V. Cunningham.)

of the license to Mr. Corwin. I was next on the premises on the morning of March 8th at 7:50 A. M. Martin Boskovich left the house and went to the dugout. He took up some trees at the entrance and went inside. He came out in about twenty minutes and went back to the house, and we saw smoke emerge from the chimney. All during that day at intervals of approximately an hour, Boskovich would go from the still to the house and from the house to the still and remain about fifteen minutes and then return to the house. In the evening just as it was getting dusk, we saw Boskovich carrying something on his shoulder from the still-house to the rear of the garage, but we could not see what it was. We could hear noises as though something heavy was being dumped into a car. On the morning of the 12th at 7:10, Agent Dunning and myself saw a car drive into the garage and a minute or two later Boskovich came out. He went from the garage to the house and started a fire in the house, and then he rushed from the house to the still-house and we heard loud noises as though barrels were being dumped over or pushed together, and the swish of water and the noise of metal clanking together. And then Agent Dunning with a search-warrant went into the dugout and I went around to the back of the dugout and on top and arrested Mr. Boskovich. In the dugout the mash was on the floor. There was moonshine on the floor. It had been dumped over. The barrels had been dumped over and holes bored in the bottom of

(Testimony of B. V. Cunningham.)

them, the side near the bottom of the vats. The mash had gone down into a cesspool. I was left in charge of the prisoner and Agent Dunning went down to the garage. A few minutes later I saw a truck coming up the road. Shortly after I saw another small car drive by going very fast. About a minute after it had gone east I saw it turn around. I was not able to tell [39] who was driving it or who got out of it as it was beyond my range of vision. Then Agent Dunning came up the hill behind three men by the name of Martin Boskoyceh, and Nick Janders or Jandrilovich and Sabljak. I heard no call before they came up there. Agent Dunning made a remark to Jandrilovich that he had pulled a fast one on him down at the road and Jandrilovich smiled and said, yes, he did. About an hour after that, Joe Sweet was brought back to the still-house by Agent Dunning.

On March 13th about six miles northeast of this West ranch I went to a garage belonging to Nick Janders and saw a car there, a Studebaker touring car with the same license number which I had seen at the West ranch garage on the morning of March 7th and on the rear seat cushion of the car I saw a round circular imprint of some sort of a keg,—a ten-gallon keg, and it smelled very much of mash, and moonshine. I saw the imprints on the back seat and not the cushion in back of the seat. There was the smell of mash and moonshine together. That still in my opinion had been on the West place a few months. It took four men to carry it out.

(Testimony of B. V. Cunningham.)

Cross-examination.

(By Mr. DORE.)

The only man I saw on the place prior to the arrest was Martin Boskovich. The county road from the entrance to the still is about one hundred seventy-five feet.

TESTIMONY OF EARL CORWIN, FOR THE  
GOVERNMENT (RECALLED).

EARL CORWIN, recalled as a witness on behalf of the Government, being duly sworn, testified as follows:

Direct Examination.

(By Mr. SAVAGE.)

I told Martin Boskovich that I had followed him from a point near Renton into Seattle. I traced the route and he said yes, he had driven that morning to the Blue Ribbon Garage, and I asked him if it was loaded with whiskey and he said it was. The number of the [40] Studebaker car was reported to me by Agents Dunning and Cunningham. Joe Cvitkovic told me that he lived at 9311 Fifty-first Avenue South. He said his phone number was Rainier 5626, that it was an unpublished number. Government's Exhibit Two is the dome of the still. Government's Exhibit Four is a part of the coil which was taken from the still. Government's Exhibit Five is a sample of the ninety gallons of wine which was found in the old dwelling-house across

(Testimony of Earl Corwin.)

the road from the house occupied by Boskovich. Part of Government's Exhibit Five is a sample of the mash which was taken from the cistern back of the old house which Boskovich admitted he had dumped that morning.

Cross-examination.

(By Mr. DORE.)

The conversation I am talking about, I had with the defendant, Boskovich.

Q. (By the COURT.) Did you go into either of those dwelling-houses?

A. Yes, I went into both of them.

Q. Is there a phone there?

A. No, there is no phone in either place.

TESTIMONY OF A. F. SADLER, FOR THE  
GOVERNMENT.

A. F. SADLER, called as a witness on behalf of the Government being duly sworn, testified as follows:

I am a federal prohibition agent and am acquainted with the H. S. West farm. I went there first early on the morning of March 12th with Agent Cunningham and Dunning. I was there again just before noon on March 12th. These five defendants were there in custody of Agents Cunningham, Dunning, Corwin and Marble. Sabljak said that he had got that truck in Seattle and was going to Black Diamond for a load of furniture.

(Testimony of A. F. Sadler.)

Mr. Smith asked him where he was going to get the furniture, and he said that he didn't know. He said he would find out when he got to Black Diamond. The truck [41] was parked on the road just east of the garage. I examined the radiator shortly before noon on the 12th of March. It was nearly full of water. This dugout was on the side of the ravine,—on the east side of a bank and had been dug down and the place leveled up. Government's Exhibit Three for identification is the billfold found in a pocket of the Ford sedan by Mr. Dunning and myself on March 12th. I could not say that this was the Ford sedan that Joe Sweet had driven up to the place, as I did not see him drive up in it. The billfold has been in my custody since that time.

Nick Janders lived at that time at Box 84, R. F. D., Issaquah. I found in a garage near the house a Studebaker touring car, license No. 156-956. The Ford sedan in which we found this Government's Exhibit Three did not have a license plate. In the cesspool there was mash fit for distillation.

#### Cross-examination.

(By Mr. DORE.)

The Black Diamond mine is just across the river a short distance. I don't know whether that is the Black Diamond mine or not. I am sure that Mr. Sabljak said that he was going to Black Diamond and not to the Black Diamond mine.

TESTIMONY OF W. E. MARBLE, FOR THE  
GOVERNMENT.

W. E. MARBLE, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

## Direct Examination.

(By Mr. SHERWOOD.)

I have been a federal prohibition agent for five years. I was there on March 12th. I saw the five defendants after they were arrested, and Joe Sweet would not give *ke* his name. I turned back the pocket of his coat and found inside there the name Joe Sweet. I said, "Did you mean to say you didn't have anything to do with this at all?" He said, "No, nothing at all." I said, "Don't you know any one of these men at all?" He said, "No, I don't know [42] any of them." I said, "Have you an attorney?" He said, "Yes." I said, "Who?" He said, "Fred Brown." I said, "Then you figured on getting into trouble, that is why you keep an attorney all the time," and he did not answer.

The COURT.—The last remark will be stricken and the jury instructed to disregard it.

Later in the afternoon in the Federal Prohibition Department he said that his occupation was that of cook, and he told me that he owned at that time a Cadillac. That he had owned some Buicks.

The mash which was in the cesspool was, in my estimation, fit for distillation.



(Testimony of W. E. Marble.)

The still is in the basement of the building, too large to bring into court. I went several days after the raid to the home of Nick Jandrilovich. I did not notice any automobile there.

TESTIMONY OF G. E. SEALS, FOR THE GOVERNMENT.

G. E. SEALS, called as a witness on behalf of the Government, being duly sworn, testified as follows:

Direct Examination.

(By Mr. SHERWOOD.)

I reside in Issaquah. I am acquainted with the defendant Jandrilovich here. He has lived across the road from my house since last November. At the home of Jandrilovich I have seen Joe Sweet and Martin Boskoyceh. By Sweet I mean Joe Cvitkovic. I saw them there quite often. They would come in automobiles. I have never seen any Studebaker there. They came out different hours of the day and night.

Cross-examination.

(By Mr. DORE.)

I have had fights with Janders and he has had fights with me over a cow. There is a feud between us about his stock running at large. [43] I saw them out there this summer at different times.

Q. The first time you ever saw Sweet out to Jander's place was this summer, is that right?

(Testimony of G. E. Seals.)

A. I cannot tell you the months I saw him because I don't know.

Q. You say it was this summer?

A. Some time this summer.

Q. You mean by summer, May, June, July and August? A. I don't mean any of that time.

Q. What do you mean by summer?

A. I guess May, June and July is summer, isn't it?

Q. May, June and July is the first time you ever saw Sweet out there. When was the first time you ever saw Martin out there?

A. Along some time in the summer-time.

Q. May, June or July. And the next man in between there, stand up. When did you see him out there? A. He lives there; that is his home.

Q. How long has he lived in Issaquah?

A. I have been there eight years.

Q. He has been there on the farm in Issaquah all that time, hasn't he?

A. He is on his farm one year.

Q. You and your wife have blamed Janders for reporting you to the prohibition agents, haven't you?

Mr. SAVAGE.—I object to that as not proper cross-examination.

Mr. DORE.—It goes to show bias.

Mr. SAVAGE.—That is assuming something.

Mr. DORE.—I will change the question.

Q. Is it a fact that you have accused Janders of

(Testimony of G. E. Seals.)

reporting you and your wife to the Prohibition Department?

Mr. SHERWOOD.—I object to that as not proper cross-examination. [44]

Q. You have accused them of it?

A. I have accused them of it.

Q. How many times have you accused Janders of reporting you to the Prohibition Department?

A. How is that?

Q. What was the accusation which you made against Janders? What did you say Janders had done?

Q. What was it you told Janders that he did with relation to you and the Prohibition Department?

A. I didn't get that.

Q. Well, you told us that you accused Janders of reporting you and your wife to the Prohibition Department, didn't you? A. Yes.

Q. What? A. I did.

Q. What was it you accused him of doing?

A. I accused him of turning me in.

Q. Turning you in for what?

A. On suspicion of making whiskey, I think.

Q. Of making whiskey. You went to Janders and you told Janders, "You are the man that turned me and my wife in to the Prohibition Department for making whiskey on my farm," didn't you?

A. I accused him of turning me in.

Q. You believe now that he turned you in?

A. I do.

(Testimony of G. E. Seals.)

Q. You are angry at him because he made that report about you, aren't you?

A. Well, who wouldn't be?

Direct Examination.

(By Mr. SHERWOOD.)

Janders has one cow on his place and he farmed a few potatoes there. [45]

TESTIMONY OF MRS. JENNIE M. SEALS,  
FOR THE GOVERNMENT.

Mrs. JENNIE M. SEALS, called as a witness on behalf of the Government, being duly sworn, testified as follows:

Direct Examination.

(By Mr. SHERWOOD.)

I am the wife of the gentleman who just testified. I have seen Martin Boskoyceh and I have seen Joe Sweet at Jandrilovich's place. They came some times in the afternoon, evenings and mornings. I saw a Cadillac drive up there several times. I did see Joe Sweet drive up there in a Cadillac. I have seen him out there prior to March 12th, 1929—off and on since I lived there—since November 1.

Cross-examination.

(By Mr. DORE.)

I had no row with Janders about his cow running wild. He let his stock run over the place and finally his cow got in the place and I would not

(Testimony of Mrs. Jennie M. Seals.)

let him off until he had paid me a dollar. I cannot state any certain time that I saw Joe Sweet there.

A. Yes. He said I was not much of a neighbor to charge him for letting his cow run in there, and I said, "Jandrilovich, you are not much of a neighbor to turn us in to the Prohibition Department before we were in there a week."

Q. Before you were there a week. You blamed Janders for turning you into the Prohibition Department for manufacturing whiskey? A. Yes.

Q. You still blame him for it?

A. Yes, I have reasons to.

Q. You have reason to? A. Yes.

Q. You told him at the same time that you were satisfied that he conveyed the information to Joe Sweet and Joe Sweet gave it to the Prohibition Department, didn't you? [46]

A. I told him I had an idea that is where it came from.

Q. So you told this man three weeks ago your idea was that he gave his information to Joe Sweet and Joe Sweet related to the Prohibition Department that you were making whiskey on your farm.

A. Not me, my husband.

Q. Just your husband? A. I expect so.

Q. You expect so?

A. I never made any whiskey and do not intend to.

Q. You have bad feeling towards Janders at the present time?

A. I don't have any personal feeling.

Q. You don't love him?

(Testimony of Mrs. Jennie M. Seals.)

A. I don't like people who let their stock run there.

Q. You don't like them to report you to the Prohibition Department?

A. I don't think it is very neighborly.

### TESTIMONY OF ORA A. BELL, FOR THE GOVERNMENT.

ORA A. BELL, a witness called on behalf of the Government, being first duly sworn, testified as follows:

#### Direct Examination.

(By Mr. SHERWOOD.)

I am a federal prohibition agent. I was at the West farm on March 12th, 1929, about 12:30 or 12:45 P. M. The five defendants were there and also Agents Smith, Corwin, Sadler, Dunning, Cunningham, Marble and myself. I went to the truck which was on the east side of the garage, backed into the place, at the still-house, and drove the truck out from there up about fifteen or twenty feet. I drove the Reo truck into Seattle. I checked the gas, oil and water. They were all O. K. The car pulled all right in Seattle, and idled on arterial stops, and did not get hot. There were marks on the floor boards of the truck of kegs, and a quantity of loose sugar and some straw, and it had the odor of intoxicating liquor.

On March 13, 1929, at 9:00 P. M., with Agents Sadler, Dunning, Cunningham and myself, I went

(Testimony of Gustav Deitz.)

to Jandrilovich's house and we found [47] a Studebaker touring car, license No. 156-956.

Government's Exhibits Nine and Ten were taken from the cesspool of the house located south of this still. That is fermenting mash.

TESTIMONY OF GUSTAV DEITZ, FOR THE  
GOVERNMENT.

GUSTAV DEITZ, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. SHERWOOD.)

For some time prior to March 12, 1929, I was employed at the Blue Ribbon Garage. I was night watchman at the garage. I worked all night from six o'clock on. I saw Martin Boskoyceh before. I have seen him drive cars in and out of the garage. He came in with a Studebaker once and the radiator was leaking and he wanted it fixed.

Q. I will ask you if it is not a fact that they repaired it and charged it to Joe Cvitkovic, otherwise known as Joe Sweet.

Mr. DORE.—I suggest the question is leading and I must object on that ground.

The COURT.—Objection sustained.

Q. To whom was the repair bill charged?

A. I don't know.

Mr. SHERWOOD.—Will you stand up, please, Mr. Janders?

(Testimony of Gustav Deitz.)

Q. Have you ever seen that man before?

A. No, sir.

Q. Mr. Deitz, have you ever seen this man at the Blue Ribbon Garage, otherwise known as Joe Cvitkovic?

A. Yes, sir, I think I saw him there a time or two, that is all.

Q. A time or two?      A. That is about all.

Q. Did you see him drive that particular Studebaker into that garage? [48]

Mr. DORE.—I object to that as a leading question.

The COURT.—Sustained. If you cannot avoid leading questions, turn the examination over to your associate.

Q. I will ask you how frequently Cvitkovic would come to that garage, and what time of day?

A. That is the last one you spoke of?

Q. Yes, Cvitkovic.

A. This was in the evening that I saw him there.

Mr. SHERWOOD.—Mr. Boskovich, will you stand up, please?

Q. Have you ever seen Boskovich at the Blue Ribbon Garage?      A. Yes, I think I have.

Q. Frequently? How often would you see him there?

A. Well, I could not say for sure just how often.

Q. Did he drive this particular Studebaker—

The COURT.—Let the examination stop right there.



(Testimony of Gustav Deitz.)

Cross-examination.

(By Mr. DORE.)

I am the night watchman. I have seen Martin in the garage several times. It is located at 7th and Jackson. It is two stories, basement and one floor. It is a pretty fair-sized garage. I saw Martin Boskovich in there several times. I could not say how many times. There are too many going in and out for me to say how many times I have seen him.

TESTIMONY OF H. S. WEST, FOR THE  
GOVERNMENT.

H. S. WEST, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. SHERWOOD.)

I was a joint owner with my mother of what is referred to as the H. S. West farm. It is six and one-half miles east of Renton. I resided there until May, 1928. There was no still on [49] the premises then. I had a transaction wherein I sold the premises to J. S. Cvitkovic and one Petrovich, approximately the end of July. The amount involved was \$12,000.00, \$3,000.00 of which was paid in cash. It was handled through an escrow agreement at the bank. I saw Cvitkovic two or three times. His first approach to me was that he wanted to buy the

(Testimony of H. S. West.)

property. In the conversation he did mention that he might be interested in leasing it. The down payment was delivered to me by Mr. Petrovich. I went out to the premises some three times after the transfer. Cvitkovic was there once. I know none of the other defendants.

Cross-examination.

(By Mr. DORE.)

This place is approximately four miles from Maple Valley. From Renton it is six and one-half miles. I sold it in July, 1928. At the time I saw Cvitkovic there it was about a week later. That was the only time I ever saw him on the place, a week after he bought.

Redirect Examination.

(By Mr. SHERWOOD.)

Mr. Sweet has been paying regularly upon the contract.

#### TESTIMONY OF MRS. RUTH E. WEST, FOR THE GOVERNMENT.

Mrs. RUTH E. WEST, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. SAVAGE.)

My son and I owned the West place equally. On the 24th or 25th of July the transaction was made.

(Testimony of Mrs. Ruth E. West.)

The premises were sold to Petrovich and Cvitkovic. The price was \$12,000.00, \$3,000 of which was paid down. On the place we had electric lights and our own water system. There was no still on the premises. [50]

TESTIMONY OF BESS ZELLER, FOR THE  
GOVERNMENT.

BESS ZELLER, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. SHERWOOD.)

I am employed at the Washington Mutual Savings Bank and have been for six years. I have charge of collections. The last payment was made by the defendant Cvitkovic a month ago. I never had any conversation with him. The defendant Martin Boskoyceh has made several payments. The receipt was always issued to Cvitkovic.

Cross-examination.

(By Mr. DORE.)

Boskoyceh brought money into the bank about a month ago. Mr. Cvitkovic has been making payments ever since the place was bought, and once in a while this other man would come in. I could not say how many times the other man was in. I could not say whether he was there a week ago. He probably made four or five payments.

(Testimony of Bess Zeller.)

Redirect Examination.

(By Mr. SHERWOOD.)

Q. Did you know him by the name of Boskoyceh?

A. No, I did not.

TESTIMONY OF OLIVER R. WELTZEIN,  
FOR THE GOVERNMENT.

OLIVER R. WELTZEIN, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. SHERWOOD.)

I am assistant secretary of the Washington Mutual Savings Bank. I was in charge of the escrows and the agreement on the H. F. West place. I received one payment on it on the 15th of [51] August, 1929. I believe Cvitkovic was the man who made it. The gentleman who made the payment, I presumed him to be Mr. Cvitkovic. I only waited on him once. He told me at the time that Mr. Petrovich had ceased to make payments, and the brunt of making payments had fallen upon him, and he asked me in what manner he could protect himself, and I said you have the receipts issued to him to show he had made the payments. That was all of our conversation.

TESTIMONY OF NED. E. LOWDEN, FOR THE  
GOVERNMENT.

NED. E. LOWDEN, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. SAVAGE.)

I run the Blue Ribbon Garage. I have been there seven years. I know the defendant Joe Cvitkovic. I have known him for a year and a half. I have done work on cars. I don't know whether he owned them or not. He did not pay me himself. I had his account run under the name of Joe S. I don't know whether he owned the cars or not. At the time I worked on the Studebaker and the Reo truck and I think a Nash touring car. I washed a Cadillac sedan. The accounts in the name of Joe S. were paid regularly. The accounts would be from \$50.00 to \$100.00 a month. There might have been some storage.

Q. I will ask you if after March 12th you were taken to the Fifth Avenue Garage by federal prohibition agents?     A. Yes, sir.

Q. Did you identify any car there at that time which you worked on?

A. I think there was a Reo truck there.

Q. A Reo truck?

A. Yes. I believe Joe was around to see me once after March 12th. It was pretty nearly a year

(Testimony of Ned. E. Lowden.)

ago, but I know Joe went away mad at something. I can't remember what the conversation was about. Somebody called me up at the garage. I was at home in bed. [52] It was about the Studebaker, to tow it in. I had to tow it in. Work was done on the Studebaker and it was charged to the account of Joe S. and the bill was paid.

Cross-examination.

(By Mr. DORE.)

Q. Now, I understand your testimony to be that while you owned this garage you did some repairing on the Reo and the Studebaker? A. Yes.

Q. For Joe Sweet, is that it?

A. Yes, sir. Well, I don't know who really owned the car. It was not marked "Joe Sweet."

Q. Was this the defendant? Stand up, Joe. Is that the defendant that you mean you repaired cars for?

A. Well, I don't know whether I repaired them for him or not. I really don't know who owned those cars.

Q. Is this the man who paid the bills for the cars?

A. No, he didn't pay me the bill.

Q. Well, he is the man who owed the Joe S. account? He is Joe S.? That is what I want to know. As I understand it, you had an account in your place called Joe S. Who is Joe S.? Is it Joe Sweet or somebody else?

A. I don't know it is him or not. I just wrote down Joe S. I don't know whether it is him or not.

(Testimony of Ned. E. Lowden.)

Q. Who takes in the cash down there?

A. Everybody does. I do mostly.

Q. Did you ever receive any money from Joe Sweet? Did you ever receive any money from that man for the repair of any car?

A. Yes, he paid me on the Cadillac.

Q. He paid you on the Cadillac? A. Yes.

Q. What kind of a Cadillac was it? [53]

A. It was a big Cadillac.

Q. What? A. A great big Cadillac sedan.

Q. A great big Cadillac sedan? A. Yes.

Q. Did he ever pay you any money on a Reo?

A. No.

Q. He never paid you any money on a Reo. Did he ever pay you any money on a Studebaker?

A. No.

Q. Did he ever pay you any money on a Nash?

A. No.

Q. You are not swearing that the Joe S. account has anything to do with this defendant at all, are you? A. No, I don't know.

Q. You don't know who it has to do with?

A. No.

Redirect Examination.

(By Mr. SAVAGE.)

I have done work for Martin Boskoyceh in my garage. I believe he had a Buick of his own. No, Joe S. and Martin Boskoyceh did not have a joint account. I don't know who paid me on the Joe S. account. I don't see any of the other defendants

(Testimony of Ned. E. Lowden.)

at the garage. I believe it was the drivers and not Joe Civitkovic that ordered the licenses on those cars. Martin Boskoyceh was one of the drivers. I have seen Martin Boskoyceh.

### TESTIMONY OF OLIVE BAYH, FOR THE GOVERNMENT.

OLIVE BAYH, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

#### Direct Examination.

(By Mr. SHERWOOD.)

I am assistant postmaster at Issaquah. I know Mr. Janders. [54] They are on the R. F. D. I saw him in the postoffice some time in November or December. When he lived in Issaquah, he came regularly for his mail.

#### Cross-examination.

(By Mr. DORE.)

He always got his mail under the name of Janders. I always knew him under the name of Janders. As far as I know he lived in Issaquah under the name of Janders and that was for a little more than two years. He has been going by the name of Janders for two years.



TESTIMONY OF JOHN JORGENSEN, FOR  
THE GOVERNMENT.

JOHN JORGENSEN, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. SHERWOOD.)

I am office manager of the Northern Motor Company at Tacoma. I have seen the defendant Janders. He came in some time in July with some man by the name of Fly who bought a Ford, a Model "A" Tudor sedan. He took over the contract on this car. We knew him by the name of Janders. It was a Model "A" Tudor sedan. That must have been about November. That was in connection with a transaction had with Mike Wevens. We have a record of an account with Mike Wevens, but as yet have not delivered him any car.

Cross-examination.

(By Mr. DORE.)

Q. This car that you are talking about selling Janders, that is a car which is covered by this conditional sales contract, this certified copy that I show you?

A. Yes, that is one of them. This is the first one we are talking about. [55]

Q. That is the one that you have been testifying to?  
A. Yes, sir.

(Testimony of John Jorgensen.)

Q. That is the car that you delivered?

A. Yes, that is one of them.

Q. Did you deliver two to this defendant?

A. Yes, we did.

Q. What is the name of the other car?

A. It is a Ford, Model "A," four-door sedan.

### Redirect Examination.

(By Mr. SHERWOOD.)

The motor number of the Ford sedan that I referred to is A-496900. I believe the number of the Ford sedan we also delivered him is A-603-V23.

Mr. SAVAGE.—Is there any question about this mash being fit for distillation, the mash found on the premises?

Mr. DORE.—Not at all.

Mr. SAVAGE.—The Government offers in evidence the exhibits marked from One to Eleven inclusive.

Mr. DORE.—No objection.

The COURT.—Admitted.

Government rests.

Mr. DORE.—As to the defendant Sabljak, the defendant Sabljak at this time challenges the sufficiency of the evidence to take this case to the jury against him on any count.

(Argument.)

Mr. DORE.—I make the same motion as to each of these other defendants.

(Argument by respective counsel.) [56]

The COURT.—I am thinking that there may be evidence enough to get past this point. Here is the evidence in respect to Sabljak: He came up to this place in his truck; it was a truck which bore evidence that might be construed to disclose that it had been used in the illicit liquor business. He gives an account of where he was going, where he had come from, which, of course, is incredible on its face, and he is arrested because he was found there. This truck was afterwards found to be a truck — evidence the jury can take — evidence tending to show it was the truck of Cvitkovic. All this occurred the morning after Cvitkovic had been warned,—taking what the evidence tends to show—that the still in the valley was about to be raided by the federal officers.

Shortly thereafter Cvitkovic comes with the defendants Boskoyceh and Janders. It is not a mere case of Sabljak happening along there for the purpose, as he stated, of getting water, when his truck seemed to need none, the evidence tends to show, and making an honest explanation of his appearance there, but the case of a man who attempts to conceal. That is the evidence tends to show why he was there and for what purpose.

So far as Boskoyceh is concerned, he and Janders are brought there by Cvitkovic on this same morning after this knowledge had come to Cvitkovic, and they make an explanation to fit the case, because they claim they had walked in there, while the officers say they both came out of this Ford car which Cvitkovic was driving. There had been a Stude-

baker car used in connection with these premises some time before, which it might be inferred by the jury was used to transport liquor out of the place. This car was finally found in Janders garage at his home, the day after the arrest and raid by the officers. I do not remember of any other evidence in the matter of Janders. As for Boskoyceh, in addition to being there at this time, brought by Cvitkovic, he is found to have been [57] acting as messenger for Cvitkovic in some other particulars. He made four or five payments on this ranch to the young lady in the bank who was receiving the payments, and that while Boskoyceh made some of the payments, the receipts were issued in the name of Cvitkovic.

Lowden says that Boskoyceh who is one of the drivers,—speaking about these licenses respecting which he was asked by the District Attorney,—the evidence is rather vague in respect to that, yet I think the evidence is that the licenses related to some of these particular cars.

I think I will allow the evidence as it now stands to go to the jury. After you have placed your evidence before the Court you may renew your motion if you desire.

Mr. DORE.—What did your Honor say at the end?

The COURT.—The motion will be denied, and at the conclusion of your evidence you may renew your motion, and we will see them. I think there is enough to put you on your defense.

Mr. DORE.—Note an exception.

The COURT.—It will be noted. Call the jury.  
[58]

## DEFENDANTS' EVIDENCE. (119)

TESTIMONY OF W. J. MURPHY, FOR  
DEFENDANTS.

W. J. MURPHY, a witness produced on behalf of the defendants, being first duly sworn, testified as follows:

## Direct Examination.

(By Mr. BROWN.)

My name is W. J. Murphy and I reside in Aberdeen, Washington. I have resided there for forty-one years. I am an attorney at law and have been for fourteen years. I was in Aberdeen on October 15, 1928. On that day I saw the defendant Cvitkovic and his wife and Andrew Bojcech. They came for the purpose of having a lease drawn up for some property in this county. Defendant's Exhibit No. 13 is the lease and it was signed by J. S. Cvitkovic and Helen, his wife, and Andrew Bojcech. They swore to it before me as a notary public. There were two copies made. I mailed one copy to the auditor of King County to be records. Joe Sweet took one copy. Before I mailed it to the auditor of King County, I wrote him a letter and got a reply. Defendant's Exhibit No. 13 and Exhibit No. 14 is that letter and the reply. I mailed the lease to the county auditor of King County with the contract. I mailed both instruments, and asked him what the fee would be for recording.

(Testimony of W. J. Murphy.)

(Defendant's Exhibits Nos. 13 and 14 admitted.)

I had possession of the lease from the time of its execution with instructions to file it with the auditor of King County, and the delay in filing it of record was my fault.

(Defendant's Exhibit No. 17, Certified Copy of Lease, admitted in evidence.)

Andrew Bojcech, the other party, I believe is dead. Some time this year I saw by the Aberdeen paper where Andrew Bojcech died. I wouldn't say as to the exact date.

#### Cross-examination.

(By Mr. SHERWOOD.)

I saw Bojcech. He was not any of these men here. I might [59] have had a long distance call from Joe Cvitkovic on March 4, 1929, from Seattle to Aberdeen, 1051. I might have had another call on February 26. I believe I did. I believe he called me up a couple of times about that lease. He wanted to know where the copy was that was recorded. I might have had another call on February 27th. I don't remember receiving any calls from Martin Boskoycech. I have no recollection of receiving any from Jandrilovich. I don't think I ever received any from Martin Boskovich.

TESTIMONY OF BOB BACALICH, FOR  
DEFENDANTS.

BOB BACALICH, a witness produced on behalf of the defendant, being first duly sworn, testified as follows:

(By Mr. DORE.)

I know a man called Joe Sweet. I have known him for more than fifteen years. The number of his house is 9311 Fifty-first. I was living in the house in March, 1929. I came from Tacoma and bought a place in Seattle known as the City Cafe on March 2d, and I have got the bill of sale in my pocket. I went to live in Joe Sweet's house on March 6th. I lived there until March 15th. Joe Sweet was not in that house on March 11th or March 12th. My wife and I were living in the house on March 11th. I received a telephone call on the morning of March 12th. It was between 6:00 and 7:00 o'clock in the morning. I answered the telephone. When the telephone rang, I say, "Hello," and he says, "Joe, your still has been knocked over," and then the receiver was hanged up.

Q. Your still has been knocked over?     A. Yes.

Q. You got the telephone call?     A. Yes.

Q. Do you know where Joe Sweet was that morning? [60]     A. I do not.

He had not been in the house since March 8th. Joe Sweet's wife left on March 8th and he left a day or two afterwards. He left about the 10th. He

(Testimony of Bob Bacalich.)

came back to the house on the evening of the 13th after he had been arrested.

Cross-examination.

(By Mr. SHERWOOD.)

I had an apartment house and a cigar-store in Tacoma. I have known Joe Cvitkovic for fifteen years. Joe invited me to come over to his house while I was looking to get a home to rent in Seattle. There was nobody there besides my wife and myself. I went to his house on March 6th and stayed until March 14th. On the morning of the 12th, I received a telephone call between six and seven. The man said, "Joe, one of your stills has been knocked over." He went away to make a trip somewhere. After I saw Joe, I told him the call was for him. I am a close friend of Joe Sweet's. I saw Joe Sweet about noon to-day but had no conversation with him about what I was to testify.

TESTIMONY OF MRS. FLORENCE BACALICH, FOR DEFENDANTS.

Mrs. FLORENCE BACALICH, a witness produced on behalf of the defendants, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. DORE.)

I am the wife of the last witness that was on the stand. I lived in Joe Sweet's house at 9311 Fifty-first Street some time in March this year. From



(Testimony of Mrs. Florence Bacalich.)

the 6th until the 14th. Just my husband and I. Mr. Sweet was not in that house on March 11th or 12th. Mrs. Sweet, I think, was in Aberdeen.

Cross-examination.

(By Mr. SHERWOOD.)

I moved into the Sweet home on the 6th of March. I believe the telephone number there is Rainier 5626. I don't know where [61] Mr. Cvilkovic slept on the night of March 11th. When I got up on the morning of the 12th he was not there. He slept there a couple of nights between the 6th and 14th.

TESTIMONY OF MRS. JOE SWEET, FOR  
DEFENDANTS.

Mrs. JOE SWEET, a witness produced on behalf of the defendant, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. DORE.)

My husband and I use the name of Sweet as an Americanized name. I am known generally as Mrs. Sweet and Cvitkovic. Lots of people cannot pronounce it so they say Sweet. We have been married about nineteen months. On March 11th and 12th I was in Aberdeen. I was pregnant at the time. I was in Aberdeen for four days. I went down on March 8th and came back on March 12th. I was visiting a friend of ours, Mrs. Busser.

(Testimony of Mrs. Joe Sweet.)

Cross-examination.

(By Mr. SAVAGE.)

My husband did not go to Aberdeen. On March 12th I did not receive any telephone call. Nobody called me up and asked if Joe was home. I returned in the evening of the 12th. It was dark when I got home.

TESTIMONY OF F. G. METZGER, FOR DEFENDANTS.

F. G. METZGER, a witness produced on behalf of the defendant, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. DORE.)

I am a draftsman in the King County engineer's office. I made two maps at the request of the defendant. I used my own measurements and the official records of the engineer's office. Exhibit No. 15 is a map. The top of the map being north and the left west, the right would be east and to the bottom would be south. [62] The stone wall is approximately two and one-half feet high,—in places three. It follows along in front of a rectangular square parallel to the road. The still-house is at the top of the map. The ground rises from the road to the house at a grade of approximately four per cent. Back of the house a short distance the ground slopes sharply upward. It is quite a steep hill. Up to

(Testimony of F. G. Metzger.)

the still-house it is approximately twenty feet higher, or twenty-five feet. There is a fence running parallel to the road, and a road leading into the barn at the extreme lower edge of the map, and there is a house there on the left side as you go in, or the right side of the map which is the house, and small outhouses on the west side of the road represent chicken-houses. Just east of the garage there is a wire fence. The main traveled road is the pavement running parallel to the railroad. That is out of Renton. The dirt road goes to Cedar Mountain. It is a graveled road. The gravel road is on the north side of the river. It turns off of the pavement just as Elliott, you might say, crosses the river and parallels the river around to Cedar Mountain, and comes back to the paving across the river.

#### Cross-examination.

(By Mr. SAVAGE.)

The regular Maple Valley road, the pavement, is across the river off of the map. The traveled road is thirty-two feet. From the still-house looking down, the view of the road was not obstructed by the house or the garage. The most direct route to Black Diamond is through Auburn.

(Maps, Exhibits No. 15 and 16, admitted in evidence.)

TESTIMONY OF MARTIN BOSKOVICH, FOR  
DEFENDANTS.

MARTIN BOSKOVICH, one of the defendants, called as a witness on behalf of the defense, being duly sworn, testified as follows:

Direct Examination.

(By Mr. DORE.)

I went out to this farm we have been talking about on the [63] Cedar Mountain Road on February 2d. A fellow by the name of Andrew Bojcech sent me out. I came across him in Seattle and told him I was looking for a job, and he said he had a job if I wanted to work on a farm. I said I wanted to see my wife first. I was married nine months. My wife said she would like to go. Bojcech hired me. I don't know where he is now. He agreed to pay me \$10.00 a day, and when I came over I told him I was broke and he gave me \$150.00. I didn't know anything about the still until I came to the place. It was there when we came. I came on February 2d and was arrested on March 12th. My wife and I lived in the house on the place. I made 220 gallons of whiskey altogether. Andrew Bojcech came himself around the 10th of February. He came out there and took it in a car. His car was there all the time. His car was a Studebaker. The second load was taken away on the 12th of March, around five o'clock in the morning. I took it down to Renton. A man came up on the

(Testimony of Martin Boskovich.)

11th in the evening, about six or six-thirty, and he told me to put it all together in the car and to go down to Renton the next night. Andrew Bojcech told me that there was another man, that when that man come he would give me the password. He said if the man came and said, "Good morning," or "Good evening," or something like that and said, "My name is Mr. New York"—that that was the password. A man came there on March 11th and said he was Mr. New York. He had a Ford touring car. I don't know who he was. I have never seen him since. I took the liquor down to Renton in the car which was always on the place. He told me to drive the car to Renton and to stop when I saw my car right alongside of the road. Any place I saw my car I stopped alongside of it. My car was a Nash sedan. The man took my car off the farm, and he told me he was going to leave it some place in the road. The man says, "Any place you see your car you just leave your car right alongside and I will take it, and you [64] take your car and go back to the farm." The last time I saw my car before that was when Andrew Bojcech left. He took my car away and left his car. I drove the liquor down there in Bojcech's and I stopped where I found my car in the road. A man took the other car, Bojcech's car, and drove it away with him, and I took my own car and drove back to the farm. I never saw any of the men that sit at the table with me here until I was arrested. I never knew

(Testimony of Martin Boskovich.)

any of them and I never saw any of them before that time.

Cross-examination.

(By Mr. SAVAGE.)

I worked on Sand Point on a building. Before that I worked at McClellan. Before that I worked for Joe Smith. In February, 1928, I was working in California. I was there in *in* 1929. I didn't do anything from Christmas, 1928, until February 2, 1929. I met Andrew Bojcech outside of the Smith building. I met him when we worked together at the coal mine in Cumberland in 1919? He never gave me any instructions of any kind before I went out there. He took my wife and I out there February 2d. He told me what to do with the still, and he showed me the still. There was no mash there at the time. I operated the still and he told me how to operate it. I have seen the stills operated in the old country. He was there half a day and went away. I ran the still two days and two nights. I mixed the mash. Bojcech told me how. I bought my Nash sedan in 1926. I was in Lankersheim, California. I was working on cement then. The Nash sedan cost us \$1,100.00. I drove from California. I drove out just one load of liquor on March 12th,—that was 110 gallons. I was in the still when I was arrested. There was no moonshine whiskey there. I took it all out. Andrew Bojcech had a Studebaker car. I don't know any of the men on trial with me. I never saw them before. I never [65] saw them the day before I was

(Testimony of Martin Boskovich.)

arrested. I have been in the Blue Ribbon Garage. I have seen the owner of the garage who testified here yesterday, and know him.

### TESTIMONY OF JOE CVITKOVIC, FOR DEFENDANTS.

JOE CVITKOVIC, a defendant, called as a witness on behalf of the defendant, being first duly sworn, testified as follows:

#### Direct Examination.

(By Mr. DORE.)

My right name is Joe Cvitkovic, but I usually go by the name of Sweet, because it is easier to pronounce. Mr. Petrovich is my father-in-law and he lives in California. I and my father-in-law bought the West farm in July, 1928. I leased it to Andrew Bojcech. I was in Mr. Murphy's office in Aberdeen when the lease was made out. My mother-in-law told me to phone Mr. Murphy. My mother-in-law lives in Aberdeen. Bojcech paid me fifty dollars per month. I own half of the lease and my father-in-law owns the other half. I don't know what happened to Bojcech. I was only on the place once. I am a cook. I worked at 617 Jackson Street as a cook for four years and three and one-half years and 614 Jackson Street. Now I am running the Universal Cafe. I have been working as a cook since I came to Seattle in 1920. On March 11th and 12th I was in Seattle. I was not home

(Testimony of Joe Cvitkovic.)

that night. On the morning of March 12th when I was arrested on the Maple Valley road, I was going towards Cumberland to bring my mother-in-law to town. When I was stopped on the road it was a quarter after nine. They crowded me off the highway and I couldn't go any further, so he gets out of the car, and he says, "Is your name Cvitkovic?" So I says, "Yes." So, he pulled a piece of paper out of his pocket and showed me some name, and he said, "You are under arrest." I said, "What for?" He said, "Come on with me," so I wouldn't get out of my car, and he pulled a gun and pressed it against my [66] ribs, so I walked right out of the car. It was three miles from the farm. My mother-in-law's name is Manda Petrovich. They took me up to the farm and showed me the still. I never knew it was there and knew nothing about it. I never saw Martin Boskovich who was on the witness-stand before I was arrested. The other men that are sitting down there were brought up to the farm under arrest and that is the first time I have even seen them. I was not at my house on the morning of March 12th, and so could get no telephone call. I never had any account at the Blue Ribbon Garage under the name of Joe S. I owned a car in March, a Cadillac. I did not own any other car. I did not own any truck. I own a Cadillac now. I bought it new in 1928. In March, 1929, I had no interest in any other automobile. I have used a Ford. The Ford that I was driving when I



(Testimony of Joe Cvitkovic.)

was arrested I got of Frank Fly. Frank Fly is not here, and he is not one of these defendants.

(Defendant's Exhibits No. 17 and 18 admitted in evidence.)

Nobody made any payments on the West farm property except myself. I never gave anybody any money or anything else. I have always made the payments myself at the bank, and every payment was made by me.

Cross-examination.

(By Mr. SAVAGE.)

My true name is Joe Cvitkovic. I use the name Sweet. I sometimes spell it C-v-i-t. I live at 9311 Fifty-first Avenue South. I have lived there since 1902 and own the house. I have no telephone number. In March the telephone number was Rainier 5626. It was not listed in the directory. My business is a cook. I have been in that business since 1910. I own a restaurant now. I purchased it on the first of this month. Before I bought this restaurant I just cooked around in different restaurants. I worked for a man named Luby at 617 Jackson Street for pretty nearly four [67] years. At 616 Jackson Street, I worked for three and one-half years. As a cook I got \$250.00 a month. I was married the first of 1919. I have got a partner in the business. I paid \$1,600.00 for the business.

Q. Isn't it a fact that in February, 1928, you were convicted in this court of the sale and possession of liquor?      A. No.

(Testimony of Joe Cvitkovic.)

Q. And maintaining a nuisance? A. No.

Q. You were not?

A. No. I never was convicted.

Q. You never was convicted? A. Never.

Q. Did you know any of the defendants before you were arrested? A. No.

Mr. DORE.—Just a minute. At this time I will object to that question about the conviction if it is not followed up by proof that he was convicted, and I ask that the jury be instructed at this time—

Mr. SAVAGE.—We always have a right to ask whether he has been convicted.

The COURT.—Yes, the jury knows the questions do not go for anything.

Mr. DORE.—Exception.

The COURT.—It is the answers which count. Proceed. [68]

Q. Isn't it a fact that in December of 1927 you sold some liquor to Sam Janish and delivered it to him in the city of Seattle?

A. I don't know anything about it.

Q. Isn't it a fact you sold some liquor to Sam Janish and had Boskoyceh deliver it?

A. I don't know anything about it.

Q. Isn't it a fact that on June 25, 1927, Sam Janish paid you protection money?

A. I don't know anything about it.

Mr. DORE.—I object as incompetent, irrelevant and immaterial.

A. I don't know anything about it.

(Testimony of Joe Cvitkovic.)

The COURT.—Sustained.

Before I was arrested I did not know any of the defendants. Never met any of them. I might have talked to them and I might have seen them but if I did, I don't remember it. I didn't know who they were at the time. I never associated or mixed with them. As far as I know I did not know them. None of them worked for me before that. None of them worked for me afterwards. [69] Andrew Bojcech to whom I rented the West farm lived in Aberdeen. I never took Bojcech out to the farm. My father-in-law called me to come down, and I went down to Aberdeen to make the lease. I asked Bojcech if he wanted to go with me to see the place, and he said no, he had already been down there with my father-in-law and that my father-in-law had showed him the place. I called Mr. Murphy a couple of times on the telephone about that lease and contract. I do not remember that I refused to give my name to telephone company. I left all the papers and the recording of the lease to Mr. Murphy. On September 30th, getting ready for this trial, I sold the property. I just simply sold it without cancelling the lease. I only sold my share in the property. I sold my half and my wife signed it. In March, 1929, I was living at my home, 9311 Fifty-first Street South. I was downtown on March 10th. When I got out of jail, Mr. Bacalich and Mrs. Bacalich was living at my place. They moved in on March 6th. I moved out on March 10th. I was not there on March 12th. On March

(Testimony of Joe Cvitkovic.)

12th, I was at my mother-in-law's house taking care of the kids in the home until she got back. She was in Cumberland. She left on the 10th. She got back on the 13th, and I was arrested on the 12th. I did not receive any telephone calls. I never told Mr. Corwin that I had been up gambling all night. I have not been engaged in selling liquor. I bought a Buick in 1923, and then I changed for 1924 again, and then I turned in the 1924,—I was in a wreck with the 1924, and she wasn't good, so I turned it in. I had full coverage insurance, and I got a 1925. I had a 1927 Buick, and I had a Cadillac. Every time I bought a car I bought on payments, and I turned the old one in for the new one. [70]

TESTIMONY OF ANNA SECORD, FOR DEFENDANTS.

ANNA SECORD, a witness produced on behalf of the defendants, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. DORE.)

I made a trip to Aberdeen along about March 8th with Mrs. Cvitkovic also known as Mrs. Joe Sweet. I went in the Cadillac which was her car. I stayed in Aberdeen four days, coming back on the 12th. I left Aberdeen on the afternoon of the 12th with Mrs. Sweet in her car.

Cross-examination.

(By Mr. SAVAGE.)

Mr. Svitkovic was not with us.

TESTIMONY OF MRS. ANNA BESSER, FOR  
DEFENDANTS.

Mrs. ANNA BESSER, a witness produced on behalf of the defendant, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. DORE.)

I live in Aberdeen. Mrs. Sweet is my friend. She came to my house in Aberdeen on March 8th and she stayed there four days.

TESTIMONY OF MRS. E. P. PETROVICH, FOR  
DEFENDANTS.

Mrs. E. P. PETROVICH, a witness produced on behalf of the defendant, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. DORE.)

I live in Seattle now, and I am the mother of Mrs. Sweet. On March 10th I went to Cumberland. On March 12th I was in Cumberland waiting for Joe Sweet to come and get me and bring me home. He did not come, and I waited all the 12th for him to come and he did not come, and on the 13th I took the bus. [71]

Cross-examination.

(By Mr. SAVAGE.)

I was living in Seattle at the time. I have four

(Testimony of Mrs. Thomas.)

children. One of my boys is seventeen and I have a girl fifteen and a girl twelve. I left Joe with my kids.

### TESTIMONY OF MRS. THOMAS, FOR DEFENDANTS.

Mrs. THOMAS, a witness produced on behalf of the defendants, being first duly sworn, testified as follows:

#### Direct Examination.

(By Mr. DORE.)

I live in Cumberland. Mrs. Petrovich was at my house visiting between March 11th and 13th. She came on the 10th to stay until the 13th.

### TESTIMONY OF NIKOLA JANDRILOVICH, FOR DEFENDANTS.

NIKOLA JANDRILOVICH, a defendant herein, produced as a witness on behalf of the defendants, being duly sworn, testified as follows:

#### Direct Examination.

(By Mr. DORE.)

My real name is Nikola Jandrilovich. I live under the name of Nick Janders. When I started out on a job I cut my name short to Nick Janders. I have been a miner, quartz miner and a coal miner. I have been working as a miner since 1912 and at the present time I am working at the Cedar Moun-

(Testimony of Nikola Jandrilovich.)

tain mine for the West Coal Company. Before I went to the Cedar Mountain mine, I was working at the Tiger mine, which is six miles from Issaquah, and about four miles from my home. I worked at Roslyn as a miner, and I worked at Carbonado, and I worked for the Bellingham Coal Company who owns the Tiger Mountain. I live on a farm about six miles from Issaquah. I have forty acres. It is under cultivation. I live there with my wife and the children. I was looking for work last March. I quit mining right after Thanksgiving. I sold [72] my turkeys and chickens and I quit farming. I was looking for work at the Cedar Mountain mine. I was there very often. I have a notice in my pocket showing how often I applied for work. It is from Mr. Bobask, the superintendent of the Cedar Mountain mine. I applied for work about weekly or semi-weekly from November to March. I asked Mr. Bobask, and also John McQuade, the outside foreman. John McQuade asked me if I was able to get some mining timbers. The morning I was arrested I went to the Cedar Mountain mine and nothing happened that morning, and I started up toward the hill to look for a logging camp. Logging camps were working up there, and at the same time, I had this proposition that Mr. McQuade gave to me about those timbers, mining props, if I could see some mining props up there. I left the Cedar Mountain mine around 7:00 o'clock and I started up there, and about fifteen or twenty minutes later I was arrested. I was walking with Martin Boskoyich at the time I was

(Testimony of Nikola Jandrilovich.)

arrested. I had met him at the mine. I had never seen him before that morning. He said he was looking for work the same as I was. When I was arrested I was going up on the hill looking for timbers. I had about three hundred feet more to go upon the hill. [73]

Q. They said that you had on a new pair of shows. How about that?

A. I guess they weren't so new. I bought them the Fourth of July or something—on the 28th or 29th of June, the 28th.

Q. Of the prior year? A. 1928, yes.

Q. You bought them for the Fourth of July?

A. Yes.

Q. Where did you buy them?

Mr. SAVAGE.—I object to counsel testifying.

Mr. DORE.—I am not testifying. I asked where he bought them.

The COURT.—Proceed.

Q. Where did you buy them?

A. I bought them at Issaquah.

Q. How much did you pay for them?

A. Three and one-half.

Mr. SHERWOOD.—I think that is immaterial.

The COURT.—Not too much detail, Counsel.

Q. Have you the shoes with you?

A. Yes, I have.

Q. Did you wear the shoes from the time you bought them? A. Yes.

Q. From what time had you worn them up to this time?



(Testimony of Nikola Jandrilovich.)

Mr. DORE.—I offer these in evidence.

A. Since I was arrested I didn't wear them.

Mr. SHERWOOD.—I object, your Honor on the ground there is no showing these are the same shoes, and that they are in the same condition they were in on March twelfth.

Mr. DORE.—He testified he wore them from June 28th to March 12th. [74]

The COURT.—Let us see if he has worn them since or not.

Q. How long did you wear these shoes?

A. I wore them practically every day after I bought them. It is only once a year I buy a pair of shoes. I wore those Sunday shoes—

Q. You buy a pair of shoes once a year?

A. I buy a pair of shoes once a year.

Q. When did you buy these shoes you have on now?

A. I buy them at J. C. Penney's store down at Renton.

Q. When?

A. For the Fourth of July, this year.

Q. That is the way you celebrate the Fourth?

A. That is the way I celebrate the Fourth.

The COURT.—Objection sustained. Proceed.

Mr. DORE.—To the shoes that are marked?

The COURT.—Yes.

(Shoes above referred to marked Defendants' Exhibit 19 offered and refused.)

Q. Did you have any new shoes on at that time?

A. Well, that is the only pair that I had.

(Testimony of Nikola Jandrilovich.)

Q. Were they new at that time?

A. No, they were not.

When I was arrested I was out on the gravel road. I was walking along. I saw a man standing up about thirty feet from the road in plain view, and he was looking down and I looked up, and he said, "Hey, you fellow, come up here; come up here; hurry up." I thought he must be somebody that was under a log or something, or somebody was caved in. They said that two or three times, and then I jumped up there,—it was a wall about that high (indicating) right close to the road, and I jumped with my foot on the wall, made steps, and then this person jumped out from,—about fifteen feet, and jumped toward [75] me, and he held a gun and put it in my ribs, and he said, "I am a federal officer; you are under arrest. Come on, walk up." So, when he got me up there, halfway up I started to,—I said, "I don't know what this going on,—what is it all about?" And he said, "You keep your mouth shut." And he threatened to smash my mouth, and he made a threat with his gun, and smash my mouth.

Then he was there for about ten or fifteen minutes, and he talked to this other agent, and then he said to the other agent, "If this guy here opens his mouth, give him this and that." Of course, I cannot repeat those words that he said to me, because they wouldn't fit here in this court. Then I was handcuffed and they took me down to the Federal Building afterwards. I went to jail on the 12th.

(Testimony of Nikola Jandrilovich.)

I was in jail on the 12th, 13th, and 14th. On the 14th I came out of the jail. When I left home on the morning of the 12th there wasn't any automobile of any kind in my garage, but when I came home on the 16th,—well, I was in jail the 12th, 13th and 14th, and I stayed downtown on the 15th, and I came home on the 16th and there was no car in my garage at that time. My wife was downtown at the time I was arrested. She did not come home until the 16th.

Cross-examination.

(By Mr. SHERWOOD.)

When I was arrested I gave the name of Mike Mundro. I thought if they knew my right name, they might go over there and bother my wife and kids. My wife had been sick for three or four years. I resided out near Issaquah nearly two years. I told them my name was Jandrilovich and I had no wife and had no home. Prior to March 12th, I did not know any of these defendants. On March 12th, I had gone to the Cedar Mountains mine to get work. I live three or four miles from there. I got a ride from my home on a milk truck. I told the agent that I had slept in Renton the [76] night before. I slept at my home. From the mine up to the place where the still is, it is about three-quarters of a mile. I met Martin Boskoyceh at the Cedar Mountain mine. The road was not very muddy. I did not ride up the road in the Ford sedan with Joe Cvitkovich. I am sure of that. I was just ready, "Good morning, Stranger," or some-

(Testimony of Nikola Jandrilovich.)

thing like that, and then he started hollering, "Come up here, come up here; hurry up, hurry up." So I thought somebody was caught under a timber or something. That morning I was looking for anything I could get, a job in a logging camp or cutting up logs. There is a logging camp belonging to Mr. Erickson on top of the hill. I own the Ford that Joe Cvitkovic was driving that morning. Frank Fly and I own the car together. Frank Fly still owns part of the car. I do not know where Frank Fly is now or where he lived when he bought car. I don't know how Cvitkovic got the car that morning unless he borrowed it from Frank Fly. After I was arrested, Martin Boskoyceh and Joe Sweet came out to my place in Issaquah to keep me posted on the trial. That was after March 12th. I told the officers that a car had passed me on the road down below the still that morning. I could not tell whether it was my own car that passed me and did not recognize my own car as it passed.

#### Redirect Examination.

(By Mr. DORE.)

That is the conditional sales contract of the car that I bought which belongs to me and Frank Fly. These are the receipts that Frank Fly paid for the car.

#### Recross-examination.

(By Mr. SHERWOOD.)

I only own one Ford sedan. That was my car which Joe Sweet was driving March 12. That is

(Testimony of Nikola Jandrilovich.)

the one described in the certified copy of the conditional bill of sale.

Redirect Examination.

(By Mr. DORE.)

To start from the beginning, Mr. Frank Fly ordered the car down in Tacoma and he paid a deposit on it. He ordered the car a [77] year before we got this car. So, he got notice that this car is come, that his order is going to be filled out, and he said he did not have the money. I had an old 1919 Ford and I was dissatisfied with it. I couldn't go anywhere with it, and he said to me, "If you go fifty-fifty with me you can have the car while I go out in the camps, while I am working out in the camps, and when I get back from the camps I will take the car, and I will have it for my own use." He took the car on March 7th or 8th. He and I were paying for the car together. He ordered a coupe first,—not a coupe, a tudor sedan, and then we were not satisfied with the tudor sedan, and we transferred it into a four-door sedan. When he was in the camps I used the car in town, and when he came back from the camps, he got it.

(Defendants' Exhibit 20, Conditional Sales Contract, received in evidence.)

TESTIMONY OF MRS. MARGARET HOLWORTH, FOR DEFENDANTS.

Mrs. MARGARET HOLWORTH, a witness called on behalf of the defendants, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. DORE.)

I live in the town of Issaquah. I have known Mr. Janders for a year. I lived just across the road. I have seen him working on his farm several times.

Cross-examination.

(By Mr. SAVAGE.)

I left there the first of November, 1928. I have been to his home since that time. [78]

TESTIMONY OF MRS. KOICHEVAR, FOR DEFENDANTS.

Mrs. KOICHEVAR, a witness called on behalf of the defendants, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. DORE.)

I live at Issaquah. My husband works in the mines. The boss always leaves orders for him, what to do in the mine, because the boss has to come out from Seattle. I know Nick Janders. Nick Janders was at my house sometimes two or three times

(Testimony of Mrs. Kochevar.)

a week in the early part of the year, and in March, asking for work. He was asking if there was an opening in the mines.

Cross-examination.

(By Mr. SAVAGE.)

Nick Janders sometimes was employed and sometimes he was not. He did work for a while for my husband at the Tiger Mountain mine, a year ago last winter. I do not know any of the defendants. My husband is working at the mines to-day.

TESTIMONY OF MARTIN BOSKOYCEH, FOR  
DEFENDANTS.

MARTIN BOSKOYCEH, a defendant herein, called as a witness on behalf of the defendants, being duly sworn, testified as follows:

Direct Examination.

(By Mr. DORE.)

I work at whatever I can get to do. On March 10th, before I was arrested, I had been down at South Prairie, near Tacoma. I was trimming berries,—cutting brush. I was there four days, and then I went to Buckley. I was a coal miner around Buckley. Before I was arrested I was on the road. I was coming from the mine. The mine was about half a mile away. I was asking for work. I met Janders at the mine. I had never seen him before. He was asking for a job. I didn't ask for a job because I could not locate the foreman. He was down

(Testimony of Martin Boskoyceh.)

in the mine. I was walking on the road. I was walking from job to job, wherever I could get a job. When [79] I came down this road, a fellow was hollering from the side of the road, and he said, "Hey, you two fellows, come here." We turned around like this, and we saw a man stand up, and he says, "Come here," and then he says, "Come here." Well, we were standing up, and we didn't want to take any chance, and then started to come over. We thought somebody needed help, somebody got hurt. When I got to the fence and put my foot up on the wall, and this other fellow was taking long steps and was pulling a gun, and when I saw the gun I got more excited. He took me right through the brush, through the logs. At the same time I was very careful, so I know he was behind me. I was ready to locate a good place, so I did not fall, and maybe at the same time he made a crack at me.

Q. Had you ever been on this place before?

A. No, sir.

Cross-examination.

(By Mr. SAVAGE.)

I live at Seattle. My address is 1335 Seventeenth Avenue South. I have no telephone now. I don't know whether my telephone number was Beacon 201 or Beacon 2001. I worked over by Everett. I am married. I had been looking for a job for about twenty days at the time I was arrested. I had no baggage or blankets of any kind. I have an old second-hand Buick. I kept it stored in the street.



(Testimony of Martin Boskoyceh.)

I did not keep it stored at the Blue Ribbon garage. The night before I was arrested, I was between Enumclaw and Cumberland, or between Black Diamond and Cumberland. I don't remember. I was walking. I walked, and then when I got tired, I would sleep a bit, and then wake up and walk. I never sold any liquor. I never sold a moonshine. I have been convicted of violating the liquor law for being in the possession of two gallons of wine. I did not go on December 12th to the Green-Nash [80] Company with Mr. Lowden and order a Nash sedan. I don't know of any payments being made on that Nash sedan through the Blue Ribbon Garage. I never made any payments at the Blue Ribbon Garage for any car. I did not purchase a Nash sedan in 1928. I did not have the license number taken out in name of Martin Boskovich.

#### Redirect Examination.

(By Mr. DORE.)

I never went to the Washington Mutual Savings Bank and make any payments. I don't know where it is. I never was there for any purpose. I don't know anything about selling liquor to Sam Janish in December of 1927, and I don't know that Boskoyceh delivered it.

TESTIMONY OF MARTIN BOSKOVICH, FOR  
THE GOVERNMENT (RECALLED —  
CROSS-EXAMINATION).

MARTIN BOSKOVICH, recalled by the Govern-  
ment for further cross-examination, being duly  
sworn, testified as follows:

Cross-examination.

(By Mr. SAVAGE.)

I have a Nash sedan, and I gave \$20.00 to the man  
who owns the Blue Ribbon Garage to get my plates.  
I told him to put the address in his garage because  
I didn't have any place to stay at that time. I gave  
my address as the Blue Ribbon Garage. I did not  
give my address as 1335 Seventeenth Avenue South.  
[81]

REBUTTAL.

TESTIMONY OF GEORGE L. BERGER, FOR  
THE GOVERNMENT (IN REBUTTAL).

GEORGE L. BERGER, a witness produced on  
behalf of the plaintiffs, in rebuttal, being first duly  
sworn, testified as follows:

Direct Examination.

(By Mr. SHERWOOD.)

I am assistant director of licenses of the State of  
Washington. A license was issued to Martin G.  
Boskovich, which was mailed to 1335 Seventeenth  
Avenue South, and it was a Nash car.

(Testimony of George L. Berger.)

(Application for automobile license received in evidence as Government's Exhibit 22.)

Q. I will ask you if you have an application there from Mike Pilich, 520 Jackson Street, Seattle, on Motor No. EK1741, Studebaker sedan?

Mr. DORE.—You can answer that yes or no, if you have it.

A. Yes.

Q. State license No. 156-956. A. Yes.

(Automobile license No. 156-956 received in evidence as Government's Exhibit No. 24.)

TESTIMONY OF TRIG FORNESS, FOR THE  
GOVERNMENT (IN REBUTTAL).

TRIG FORNESS, a witness produced in rebuttal by the Government, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. SHERWOOD.)

I am a salesman for the Green-Nash Corporation. I know the defendant Martin Boskoyceh by the name of Martin Butoroc.

Q. I will ask you if about December 12, 1928, he came up to the Green-Nash Company in company with Mr. Lowden, the owner of the Blue Ribbon Garage.

Mr. DORE.—I object as impeachment on a collateral matter at the best. [82]

The COURT.—Objection overruled.

A. Yes.

(Testimony of Trig Forness.)

They purchased from me at that time a 1927 advanced Nash touring car and took delivery at the Green-Nash Corporation. The address given was 5131½ Minor Street, but there was no such address and the mail was returned. I got in touch with Mr. Lowden at the Blue Ribbon Garage and the mail was delivered to the Blue Ribbon Garage, and I suppose the payments were made from there to the Pacific Finance Company. The motor number of the car purchased is 301294, and the serial number was 418343.

Cross-examination.

(By Mr. DORE.)

I don't know who made the payments on it. The car was not delivered at the Blue Ribbon garage. It was delivered at the Green-Nash Corporation. I never testified that it was delivered at the Blue Ribbon Garage.

(Defense rests.)

(Government rests.)

Mr. DORE.—The defendants rest. We renew, without argument, the motions made on behalf of each of the defendants on each and every count.

The COURT.—The Court will allow the case to the jury on the theory that there is evidence enough from the legal standpoint, if accepted by the jury, from which they might infer guilt, but they are not bound to, by any means. The matter may be brought to the Court's attention again by a motion for a new trial. At this time the motion is denied.

Mr. DORE.—As to each and every one on each and every count?

The COURT.—Yes.

Mr. DORE.—Exception.

The COURT.—Exception allowed. [83]

### CONTINUATION OF PROCEEDINGS.

All parties present—October 4, 1929, 2 P. M.

(Argument to jury by Mr. Dore and Mr. Savage.)

### INSTRUCTIONS OF THE COURT TO THE JURY.

The COURT.—Well, Gentlemen of the Jury, you have heard the evidence and the argument, now it is for the Court to deliver to you what is termed the instructions or charge. That is merely to make you acquainted with the rules of law that apply to the case, and in the light of which you will determine the facts. You always take the law from the Court, and the reason is that the Court always gives the law the same way, and all men are then tried by the same law. That is the only reason.

But when it comes to the facts, what witnesses to believe, what weight to give to their testimony, what weight you will give to circumstances, and what inferences you will draw from circumstances—all of that is exclusively your function. The Court may express its opinion with respect to the facts, but if it does, it is not with any expectation to bind you to its opinion, for it has neither the power nor the disposition to do so, but sometimes does in the hope to aid you in reasoning out a difficult case in order to come to a correct conclusion. So remem-

ber, while you take the law from the Court you determine the facts for yourselves.

The defendants in this case, with one Petrovich, who has not been apprehended, who it develops is the father-in-law of the defendant Cvitkovic here, are charged by the United States in an indictment containing three counts or three charges. The first is that they conspired unlawfully and feloniously to violate the National Prohibition Act. That is to say, to manufacture and possess intoxicating liquor unlawfully and to maintain a place where it was manufactured as a common nuisance.

You will remember they are not charged with violating [84] the National Prohibition Act, but they are charged with a conspiracy, an agreement or understanding that they would violate it by thus manufacturing and possessing the liquor out at this particular place. More of that later. That is the first count.

They are charged with a conspiracy between themselves and persons unknown to the grand jury,—in connection with that a great many overt acts as they are termed, are set out in the indictment, as of necessity they must be, some of which the Government must approve.

The second count charges that at this time and place, on this particular farm, they carried on the business of a distiller of spirits unlawfully in that they had not given a bond required by law. That is a charge under the Internal Revenue Statutes of the United States, which have stood since the beginning of the Government and are still the law.

The Government still collects revenue on the manufacture of intoxicating liquor. No one can manufacture it lawfully—for there are many lawful uses; it is still manufactured for that—without first giving a bond that he will carry on the business according to the law. And the charge is that they did not give the bond for carrying on the business.

The third count is that they unlawfully fermented mash fit for the distillation of spirits on premises other than a duly authorized distillery. The Commissioner of Internal Revenue still authorizes distilleries in certain places to manufacture whiskey lawfully, and only in such places can liquor and mash be made lawfully. Anyone who makes mash for the distillation of spirits outside of a place that has been duly authorized by the Commissioner as a distillery, violates the law and would be guilty of this third count.

You might find the defendants guilty of one or more of [85] these counts, or all of them, depending on how you view the evidence. But it has to be said to you, however, that anyone that is guilty of any one of these counts or charges in this indictment is guilty of all of them.

It stands without contradiction that distilling apparatus was there, that liquor was distilled and that mash was made there. And, of course, without any bond and in a place other than a authorized distillery. I cannot see how under the law anyone could be guilty of any one of these counts without being guilty of all. More of the law later.

The defendants have each and all of them pleaded

not guilty to all of these charges. That raises in their behalf the presumption of innocence. Neither you nor I knew when we started this trial whether they or anyone of them were guilty or not guilty. So the law creates a status for them, namely, we will presume that they are innocent, and that presumption which is evidence in their behalf you must keep in mind throughout the trial, until it is overcome, if at all, in your judgment, by evidence which proves guilt beyond a reasonable doubt. The presumption requires that you will acquit any defendant—the presumption of innocence—unless you find from the evidence that he is guilty beyond a reasonable doubt. The burden is on the Government to prove the guilt of these defendants or such of them as it can beyond a reasonable doubt before you can convict that defendant.

Now, the burden is not upon the Government to prove guilt to an absolute certainty or beyond all doubt, because that is impossible. There is nothing that can be proven from the witnesses here to an absolute certainty, beyond all doubt. So the law is that guilt should be proven only beyond a reasonable doubt. What is meant by “beyond a reasonable doubt”? Those words have, perhaps, as much meaning as any others. Yet in an endeavor to clarify them [86] we could say this: after you have considered all the evidence in the case, both for the Government and the defendants—and the evidence, mind you, is not only the testimony of the witnesses, the documents and exhibits, but also the circumstances which are disclosed and the surround-



ing general conditions. When you have considered all that, if you have not a persistent judgment that to a very high degree of probability the defendants are guilty as charged, you have a reasonable doubt, and it would be your duty to acquit them, or any of them in which that is your frame of mind.

On the other hand, after you have given that full consideration to all the evidence, if you have a persistent judgment that to a very high degree of probability the defendant is guilty as charged, you have no reasonable doubt and you would convict him.

But, remember, this very high degree of probability and this persistent judgment must not be arrived at by guessing, by conjecture, by suspicion but wholly by a consideration of all the evidence in the case.

Nothing can be proven beyond some degree of probability. But when it comes to proving the guilt of a party charged with a crime, the degree of probability must be that which gives rise in your mind to a persistent judgment of his guilt. When you have come to that state of mind, the law is that you have no reasonable doubt and should convict.

A defendant is never required to prove his innocence. On the other hand, the Government is always required to prove his guilt.

A defendant may stand silent,—one of them did in this case—and simply insist on his legal rights that before he is found guilty, the Government must prove him guilty beyond a reasonable doubt. When a defendant stands silent and does not testify in

his own behalf, as did the defendant Sabljak, the law [87] is that the District Attorney must not refer in his argument to the fact that the defendant did not testify and the jury is not to draw any adverse inferences against him by reason of that fact. He simply exercises a right that is his, and he must not be prejudiced by reason of that fact. Remember, that the question you determine is not: Is the defendant innocent? A defendant may not have proven his innocence, yet you will acquit him. You might not believe he is innocent, but you will acquit him unless you are persuaded from the evidence he is guilty beyond a reasonable doubt. On the other hand, you may have a doubt of the guilt of any defendant, yet you will convict him unless in your judgment the doubt is a reasonable doubt, as I have defined it to you.

The credibility of witnesses is exclusively for you. You see them, you observe them, their demeanor on the witness-stand, you take note of their manner, whether they seem to be frank and fair with you or otherwise, take note of the reasonableness of their statements to you, whether they coincide with other witnesses, or with circumstances which you believe, or whether they are contradicted by witnesses or circumstances which you may prefer to believe, whether the witness has any interest or any motive, if any such appears, and upon the whole of these and other considerations, the same as you would determine the credibility of men with whom you deal in life, in business, you determine the credibil-

ity of the witnesses upon the stand and give credit and weight accordingly.

When *a* defendants testify in their own behalf, remember they are defendants; they have a very large interest in this case. They are charged with offenses that are grave enough and the consequences to them will be serious enough at lightest if they are convicted. You ask yourselves whether that self-interest of theirs—the greatest influence which moves a man to action as a rule—whether that [88] self-interest has moved them to falsify in this case in order to deceive you, to raise a reasonable doubt of their guilt in your minds, if otherwise you had not one and secure a verdict of acquittal and go free of their offenses, if they committed them.

There is no rule of law that a defendant will falsify to save himself, but you will remember he is a defendant, and will determine for yourself whether he has falsified in any particular in this case.

There is a rule of law that if a witness testifies falsely before you in any one particular, it is your duty to mistrust all the balance of his testimony, and if your judgment approves you may reject it all as unworthy of credit, because the law goes on that theory—the law extending this right to you, goes on the theory that you might well say that if a witness testified falsely in one particular under oath, how can I determine he will not adhere to his conduct in other particulars? That is a matter for the jury to determine entirely. There is also a rule of law that a witness who thus testifies falsely in

one particular may have testified falsely in all, and the jury views his testimony with caution.

Now, Gentlemen of the Jury, to come back again, to the law. The first count is that the defendants conspired together and with other persons to violate the National Prohibition Act. That is to say, to manufacture intoxicating liquor out on this particular farm. They are not charged, remember, with violating the National Prohibition Act. That is not what is being tried, but conspiring together to do so. Of course, the National Prohibition Act was really violated by somebody, but that is not the charge here.

Now, conspiracy is in the nature of a partnership in crime, to do something which the law forbids, either by unlawful means [89] or itself unlawful.

Now, in this case, this manufacture of liquor out in this place was clearly unlawful. If these defendants associated themselves together to manufacture that liquor, which is unlawful, then they were engaged in conspiracy as charged.

A conspiracy means that there was an agreement or understanding between two or more persons to do the thing which was the object of the conspiracy.

So in this case there must have been an understanding or agreement between these parties that this unlawful business would be carried on by them before they could be guilty of conspiracy.

It is not necessary that every conspirator should have been a member of the conspiracy from the beginning. It is like any other partnership, those who may come in late are just as guilty as those who

came in in the beginning, early. A man who comes in at the last portion of the conspiracy in an endeavor to save the proceeds of it, or to further its objects in any way, would be guilty of everything that was done, just as much as those who were in from the beginning. So it might be said right here that if some of these defendants established this distillery out upon this West farm and at the last minute when the news got out, if it did, that the Government had discovered it and was about to destroy it—anyone who engaged with the original conspirators to help them to remove and save the appliances and instrumentalities to the end that they might be set up and the business continued somewhere else, would be just as guilty of the whole conspiracy as though he had been in from the beginning, and had a part in setting up the plant in the first instance. So, in a conspiracy, too, whatever one does, all are liable for. Just as in a civil partnership, what your partner does in the business, you are liable for. So if only one man was engaged in making the mash or running the [90] whiskey, running the still, if it was done in pursuance to an understanding or agreement to benefit them all, for them all, why, his acts in running the still and in making the mash were the acts of all and all are equally guilty with him.

It is not necessary in any conspiracy that the Government must show you that they sat down and agreed in formal words, we will engage in this enterprise and that business thereupon followed. Not at all. It may be implied by their acts, by their con-

duct, by the circumstances in the case, but when you imply it, of course, the acts, conduct and circumstances must be sufficient to persuade your judgment that a party was a member of the conspiracy beyond a reasonable doubt before you would find him guilty.

All conspirators need not know each other. It is not necessary all the conspirators know each other. There may be a master mind who engages half a dozen different men to work as instruments to a common end which is unlawful; each of those parties may not know the other parties. Yet, if hired by this master mind to accomplish this unlawful purpose, and they knowingly aid him they are all guilty even though they may not have—each conspirator may have known no one but the central figure in it.

That is easy to be understood; plain to you all, I know.

A conspiracy to act in agreement may be proven by circumstantial evidence. It is not always possible to have a witness who can say, "I saw this man do this offense," or "do this act," which is an offense. It may be proven by circumstances. There is an ancient maxim that circumstances may point unerringly to the truth where witnesses may falsify upon the stand.

Of course that you can easily illustrate to yourselves. If you have a private office—to give you an illustration—and you come out of it and leave your pocket-book on the desk there, and there is only one entrance and you are standing at that entrance and one of your clerks would pass in through that

entrance and [91] when he comes out your pocket-book is gone, you could not swear you saw him take it, but the circumstances would point unerringly to the fact that he did. I am simply giving you that as an illustration as to what is meant by circumstantial evidence.

But the law goes further than that and says that circumstances may sometimes deceive even as witnesses deceive. The law is that when the guilt of a man is made to depend upon circumstantial evidence alone that the circumstances must be reasonably consistent with his guilt and not at all reasonable with any other hypothesis or theory which will disclose that he was not guilty; they must unerringly point to the fact of his guilt. If they are as consistent with innocence as with guilt, then you are bound to acquit him, because in that case there is clearly a reasonable doubt.

If the Government depends on circumstances to prove guilt, and those circumstances are just as consistent with the innocence of the man as with his guilt, that is enough for a reasonable doubt, and it is your duty to acquit the defendant where the proof is in that state.

Now, Gentlemen of the Jury, coming to the evidence. There are a good many facts in this case upon which there is no dispute. Here is a farm at some distance out of Seattle—I don't know just how far—not very far; twelve miles.

Mr. DORE.—About fifteen or sixteen miles.

The COURT.—About fifteen or sixteen miles, which is owned by the defendant Cvitkovic and his

father-in-law, Petrovich. They bought it some time in 1928—in the summer of 1928. Along in March the officers' attention somehow is attracted to this farm, and they go there on March 7th and 8th, some of them, and they watch and they find and see the defendant Boskovich about the place, and they find a very large still there, a large amount of mash in condition for fermentation and some of the liquor that undoubtedly was run from the still. [92] In other words, they find a very large unlawful distillery in operation. They watched the place some time, and there is evidence that a Studebaker car was seen going from there, heavily weighted, and later that went to the Blue Ribbon Garage. That in itself is not very important. But they go back there on the morning of the 18th of March, and while they are watching Boskovich drives into a garage on the place in a Nash car. This was at 7:10 in the morning, according to the evidence of Agent Dunning. In the meantime Agent Corwin, who had been there, had gone to town, and some time after six o'clock—about six-thirty, if I remember the evidence right—remember, if the attorneys and the Court are in error in their recollection of the evidence it is for you finally to determine what the evidence is. But anyhow, between six and seven o'clock Corwin came to town, and after having come from that place for some reason, an inference of his, he tries to find Cvitkovic's phone number, and not finding it in the book—Cvitkovic agrees that his phone number is not in the book, for some reason, he calls up Boskoyceh, so Corwin testifies,



and from Boskoyceh, Corwin testifies he gets Cvitkovic's phone number. Corwin then testifies that he telephoned to Cvitkovic's phone number, and he gets—we will take that as evidence established, because the defendants produce a witness who says he is the one that got the message—Corwin says, however, that a man came to the phone—some woman came and Corwin asked for Joe, that Joe finally came—Cvitkovic came to the phone and Corwin says that he recognized his voice and asked him who it was, and he said it was Joe, and he told him that his still had been knocked over or was about to be knocked over. Corwin says that the man whom he identifies as Cvitkovic asked, “Which still?” and he said, “The one in Maple Valley,” whereupon the party at the other end, whom he identifies as Cvitkovic, uttered an oath and hung up the phone. [93]

Well, immediately things began to happen, that is very apparent, because at 7:40, the testimony is undisputed that Sabljak appears out to this farm with a Reo truck, and according to the testimony of the officers, and I do not remember that is contradicted—he backed into the fence—the rear of the truck is backed in near the garage or at the garage, and he gets down and he removes his overcoat and puts it upon the seat, and thereupon he is arrested. That was about 7:15 o'clock, according to the testimony of Dunning.

Some little time later—I don't remember how much later; it appeared in the evidence—Officer Dunning testifies that a Ford car drove up and he

says the defendant Cvitkovic was driving the car, and that out of that car, Janders or Jandrilovich and Boskoyceh descended. Dunning also testifies that they started to run or Jandrilovich at one time tried to conceal himself behind a tree, and as they started to run he hollered to them, "Here, come on. Get this still out before the officers come," evidently to give them the impression that he was one of those who had an interest in protecting whoever was running the still according to his testimony, and he says, that they turned around and says, "All right," and came up to go with him for that purpose, when he arrested them.

At that point there was some conversation testified to by the officers—perhaps there is not much dispute about it—with respect to what was said; that Sabljak said that he was on the way to get some furniture for someone but did not know who, did not remember, and that he borrowed a truck in Seattle that morning from someone, but did not remember from whom, and that he was going to Black Diamond to get some furniture, but he did not know from whom, but would take his chance on finding the place, and the like. That is all he knew about it.

In this Reo truck however, was some evidence that it was used in the illicit business according to the officers, or it might not. [94] That would be for you to say, of course. There were rings on it like a keg would make, and that there was some corn sugar scattered in it, which everyone knows is often used in the manufacture of illicit liquor,

and that about it was an odor of mash or moonshine, according to the testimony of one of the officers.

The officers further testified that Jandrilovich and Boskoyceh said they had come down looking for work from the mines. I don't remember whether they said they had walked all night or not. Boskoyceh says he did walk all night. So I suppose Jandrilovich was with him all night. They did not get work, and had just stopped there to get something to eat. Incidentally, Sabljak had told the officers that he stopped there to get water for his car, and they all testified they looked at the radiator of the car and they found no need of any water whatever; it was plentifully supplied.

Jandrilovich and Boskoyceh says, "We stopped to get something to eat after walking down some distance fom the mine." I don't know and you don't know how far. The officers testified the roads were muddy but their shoes did not show any signs of walking.

Anyhow Dunning says he saw them descend from this Ford that Cvitkovic was driving.

Dunning goes away for the purpose of phoning, or otherwise and encounters the defendant Cvitkovic in this Ford, Dunning says, some distance from the farm. I don't know how far. I think Cvitkovic testified about three miles. Dunning brings him in and arrests him. Cvitkovic has nothing to say except that he would not talk according to the officers. Whether that means anything or not, is a matter entirely for your judgment.

In this car which Cvitkovic is driving they find this little book which contained an application for a car—I don't know whether it is this Ford or not; whether it has been identified as this car—in the name of Nick Janders, and the address of [95] Nick Janders, Box 84, Issaquah, Washington, where Janders did live, this being in an envelope addressed to him from George Grant, County Auditor.

Cvitkovic says that he got this car from Fly. Janders says that it was his car and Fly's, bought in the name of Fly, and that Fly let him use it while Fly was in some logging-camp. If I remember right, the testimony was that Fly had gotten the car a few days before.

These men were arrested and brought in. While Jandrilovic was still in jail the officers go out to his place near Issaquah and in his garage they find this Studebaker car which the officers had heretofore seen in the garage on this farm where the still was, and the same Studebaker car which Corwin had seen driving one night heavily loaded, as he says, to the Blue Ribbon Garage.

Now, the officers who testified to seeing this Studebaker at Jander's place were Dunning and Sadler. They both testified it was there. Marble, who I think was with them, says he did not notice it, or did not see it. He did not notice it as counsel read to you.

There is some other evidence that these men were known at the Blue Ribbon Garage. The evidence of the proprietor of the garage, Lowden—you heard it—he testified on direct examination

to doing some work for Cvitkovic under an account with Joe S. or J. S., and then afterward on cross-examination he said he did not know who J. S. meant, who Joe S. meant, and I think he said Cvitkovic had not paid him anything on that account.

There was some evidence also that Boskoyceh had gone with Lowden and purchased a Nash car. But I do not think it is identified as any of the Nash cars in this case. At least I don't remember that it is.

But the significant fact is that the license of the car that Boskoyceh purchased was taken out in the name of Boskovich and sent [96] to Boskoyceh's house.

All of these circumstances, of course, are produced by the Government in an endeavor to show to you there was an association or acquaintance between these men before this vital time, March 12th, when the raid was made, although the defendants all deny there was any acquaintance between them at all, if I remember their testimony correctly.

There is another circumstance that this farm of Cvitkovic's was being paid for during this time and while these defendants deny knowing each other. While Boskoyceh and Cvitkovic deny they knew each other, Miss Zeller testifies that they, Cvitkovic and Boskoyceh made four or five payments at the bank on the property which Cvitkovic bought from the Wests, the papers being there in escrow.

The defendants testified, as far as they did tes-

tify, except Sabljak, to whom I have referred—Cvitkovic testified that Corwin never called him, that he was not at his house at all, that he was stopping at his mother-in-law's house, taking care of her children. He brings several witnesses to corroborate that he was not at his home, and that Bacalich was living in his house that particular day, March 12th. Bacalich testifies that he got a phone call from Corwin telling him that your still has been knocked over, or Joe's still has been knocked over.

Cvitkovic further testifies that on the day that he was arrested he did have Janders' car and that he got it from Fly. There is some testimony that he said that he owned the car, and at a later time said that it was Laquish's car. Corwin testifies that Cvitkovic said that day that it was his car, and also that it belonged to Laquish.

There is testimony from Mr. and Mrs. Seals that they had some trouble with Janders, and that they had seen Boskoyceh and [97] Cvitkovic out to Janders' place. Mr. Seal fixed the time as this year after the arrest, when they admit, I think, that they did go out and discuss their case. But Mrs. Seals says she saw Cvitkovic on Janders' place in November, 1928.

Cvitkovic denies that he had anything to do with it, that he had leased the place to a man whose name I don't remember. You have heard the circumstances in connection with that thing. He is corroborated by his attorney, a Mr. Murphy from Aberdeen, who says such a lease was drawn up by him and afterwards recorded. Now, here is the

situation with respect to Cvitkovic and the farm. He owned the farm but he says he leased it to someone, whom I think Boskoyvich says hired him to run the still. The mere ownership of the farm or the leasing of the farm would not render Cvitkovic guilty of what was done there, if he had no part nor parcel in it and did not lease the farm for that particular purpose.

Of course, a landlord cannot be liable if he leases his place and someone carries on an illicit business in it without his consent, without his supervision; the landlord cannot be held liable at all, of course, if that is the extent of Cvitkovic's connection with this operation. It so happens that he bought the farm in 1928 and leased it to this man, who afterwards through himself or agents conducted an unlawful business. If that is all without any purpose on Cvitkovic's part to aid therein, that would not render Cvitkovic liable for any of the things that were so done there.

You have heard the testimony of Janders and Boskoyceh that they walked down there from the mine that morning for work, both of them and did not come there in Cvitkovic's car, in the Ford, or with Cvitkovic at all; that they did stop there to eat; that Boskoyceh and, I think, Janders, told the officers that they were strangers in the country and did not have any home, just wandering through or about there. And they testified they never knew anything of what was going on there [98] before and had nothing to do with it at that time. They testified to some action of the officers to dispel the idea

that they were going up to the still—of the officers calling, thinking the officers were associates to aid in removing the still.

As for Boskovich, he admits his guilt. All he is charged with. He says that he was hired—that he did not know any of these other defendants; that he was hired by someone, I think by the same name. Cvitkovic says that he executed the lease to—to go there for \$10.00 a day; when he got there he found that he was expected to run a still, and he did run it; that he made some mash and ran some of the liquor, and he tells you how it was hauled out. He does not deny anything except he denies any of these other defendants had anything to do with it, or he knew any of them at that particular time. In any event, according to his own admission, he was in a conspiracy with someone and did these things with which he is charged, and consequently, he, at least, is guilty of all these counts beyond any reasonable doubt.

I suppose men have been known to admit their guilt when they were not guilty, but I do not think this is that sort of case as far as Boskovich is concerned.

Gentlemen, I think that is all there is in the case. There is not any need to go over the evidence further. You have heard it and you remember it, all the incidents and the circumstances that the Government counts upon to prove the guilt of the defendants beyond a reasonable doubt.

At the same time you have heard the defendants' defense and you remember it, upon which they rely



to dispel the idea that they are proven guilty beyond a reasonable doubt. It is for you to say where the truth lies between them. [99]

The Court will conclude as it began. The defendants and each of them are presumed to be innocent, and that presumption requires that you acquit any of them whom you do not find from the evidence in the case is proven guilty beyond a reasonable doubt. But anyone whom you do find proven guilty of these charges beyond a reasonable doubt, it is your duty to convict.

There was one element of the case that I did want to come back to, and that is with reference to a conspiracy. I said a man who comes in late is just as guilty as a man who comes in early. There are some circumstances which the Government contends do tend to show acquaintance between Boskoyceh, Cvitkovic, Boskovich and Janders before this time of the raid. But regardless of that, suppose that there is no evidence that Jandrilovich, Sabljak and Boskoyceh ever had anything to do with it before the day of the raid; if Sabljak went there with his truck that morning with the intent and for the purpose and with the understanding with some of these parties he was going there for the purpose of helping to remove the still, the instrumentality set up there by someone else, then he was furthering the objects of their conspiracy and just as guilty as if he proceeded from the beginning.

But, again, the Court concludes as it began. It is for you to determine whether these defendants or

any of them are proven guilty beyond a reasonable doubt. If you find they are, you will find them guilty; if you find they are not, you will find them not guilty.

When you retire to your jury-room you will select one of your number to act as foreman and who will sign whatever verdict you agree upon. It will take twelve of your number to agree upon a verdict.

Exceptions.

Mr. DORE.—The first exception—I think it is an oversight [100] on your Honor's part—you stated that if a witness testifies falsely to any material matter—I think it should be if he wilfully testifies falsely to a material matter.

The COURT.—If he testifies falsely at all. If he testifies falsely by mistake in one particular you may ask yourselves whether he has not testified falsely by mistake in other particulars. If he testifies falsely, wilfully, and intentionally, then, again, you may say whether his oath is worth anything in other particulars.

Mr. DORE.—Note an exception.

The COURT.—Yes.

Mr. DORE.—The other exceptions, go to whether a person can be guilty who aids and abets under that second count. May I have an exception running to all those and to the refusal to give all those?

The COURT.—Yes. The jury will retire.

(The jury then retired to deliberate upon its verdict.) [101]

(The jury, after deliberating, returned into court, when the following took place:)

The COURT.—I see that there is only two counts covered by this verdict, and there are three in the indictment.

The FOREMAN OF THE JURY.—That matter was mentioned in the jury-room.

The COURT.—It was an oversight, but I take it that under the instructions you would find the same verdict as to the third count, as to the first two.

The FOREMAN.—Yes, your Honor.

The COURT.—Do all of the jurors agree with that?

(All of the jurors answer “Yes.”)

The COURT.—Well, then, the foreman will write in the third count on the verdict, finding those guilty that you have found guilty on counts one and two, and finding those not guilty that you have found not guilty on counts one and two.

(The foreman does the same.)

On October 14, 1929, the defendants being called for sentence, after the imposition of the sentence, Mr. Dore inquired of the Court whether or not a sentence would not be imposed on each count, to which the Court responded, “No, the sentence is on the whole indictment. One sentence on the whole indictment.”

O. K.—CAMERON SHERWOOD,

Asst. U. S. Atty. [102]

Now, on this 25th day of November, 1929, the foregoing bill of exceptions is hereby settled and allowed as a complete and true bill of exceptions in

the above-entitled cause. The instructions *some* amended by the Court, to conform as near as may be to fact, true in substance.

BOURQUIN,  
District Judge.

[Endorsed]: Lodged Oct. 18, 1929.

[Endorsed]: Filed Nov. 25, 1929.

Received a copy of the within bill of exceptions this 18 day of Oct., 1929.

ANTHONY SAVAGE,  
Attorney for Pltff. [103]

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[Title of Court and Cause.]

#### NOTICE OF APPEAL.

To the Plaintiff Above Named and to ANTHONY B. SAVAGE, Attorney for Said Plaintiff:

You, and each of you, will please take notice that the defendant hereinafter named, to wit, J. S. Cvitkovic, Nikola Jandrilovich, Martin Boskovich, and Martin Boskoyceh, have appealed and do hereby appeal from that certain judgment and sentence heretofore entered against them in the above-entitled court, and from each and every part thereof, to the United States Circuit Court of Appeals for the Ninth Circuit.

[Endorsed]: Received a copy of the within notice this 25 day of Nov., 1929.

ANTHONY SAVAGE,  
Attorney for Pltff.  
JOHN F. DORE,  
FRED C. BROWN,  
Attorneys for Defendants.

[Endorsed]: Filed Nov. 25, 1929. [104]

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[Title of Court and Cause.]

PETITION FOR APPEAL.

*In* the Above-entitled Court and to the Honorable  
GEORGE M. BOURQUIN, Judge Thereof:

Come now J. S. Cvitkovich, Martin Boskovich, Nikola Jandrilovich, and Martin Boskoyceh, defendants in the above-entitled cause, and by their attorneys, John F. Dore and Fred C. Brown, respectfully show that on the 2d day of October, 1929, a jury impaneled in the above-entitled court and cause returned a verdict finding the above-named defendants guilty of the indictment theretofore filed in the above-entitled court and cause; and thereafter, within the time limited by law, under the rules and order of this court, the said defendants moved for a new trial, which said motion was by the Court overruled and an exception thereto allowed; and thereafter, on the 3d day of October, 1929, the said defendants were by order and judgment and sentence of the above-entitled court in said cause

sentenced as follows: The said J. S. Cvitkovich, 18 months in the United States Penitentiary at McNeil Island, and a fine of \$1,500.00 and costs; the said Martin Boskovich, 13 months in the United States Penitentiary at McNeil Island and a fine of \$1,000.00 and costs; the said Nikola Jandrilovich, 13 months in the United States Penitentiary at McNeil Island and a fine of \$1,000.00 and costs; the said Martin Boskoyceh, 13 months in the United States Penitentiary at McNeil [105] Island, and a fine of \$1,000.00 and costs.

And your petitioners herein, feeling themselves aggrieved by said verdict and the judgment and sentence of the Court herein, as aforesaid, and by the orders and rulings of said Court, and proceedings in said cause, now hereby petition this Court for an order allowing them to prosecute an appeal from said judgment and sentence to the United States Circuit Court of Appeals for the Ninth Circuit, under the laws of the United States and in accordance with the procedure of said court made and provided, to the end that the said proceedings as herein recited, and as more fully set forth in the assignments of error presented herein, may be reviewed and the manifest error appearing upon the face of the record of said proceedings and upon the trial of said cause, may be by said Circuit Court of Appeals corrected; and therefore, premises considered, your petitioners pray that an appeal lie to the end that said proceedings of the District Court of the United States for the Western District of Washington may be reviewed and corrected, the

said errors in said record being herewith assigned and presented herewith, and that pending the final determination of said appeal by said Appellate Court an order may be entered herein that all further proceedings be suspended and stayed, and that pending such final determination said defendants be admitted to bail.

JOHN F. DORE,  
FRED C. BROWN,  
Attorneys for Defendants.

[Endorsed]: Received a copy of the within petition this 25 day of Nov., 1929.

ANTHONY SAVAGE,  
Attorney for Pltff.

[Endorsed]: Filed Nov. 25, 1929. [106]

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[Title of Court and Cause.]

### ASSIGNMENT OF ERRORS.

Come now J. S. Cvitkovic, Martin Boskovich, Nikola Jandrilovich, and Martin Boskoyceh, defendants in the above-entitled cause, and in connection with their appeal and petition for appeal in this cause, submitted and filed herewith, assign the following errors which said defendants aver and say occurred in the proceedings and trial in the above-entitled cause and in the above-entitled court, and upon which they rely to reverse, set aside and correct the judgment and sentence herein entered, and

say that there is manifest error appearing upon the face of the record and in the proceedings, in this:

### I.

The Court erred in giving to the jury the instruction reading as follows:

“But it has to be said to you, however, that anyone that is guilty of any one of these counts or charges in this indictment is guilty of all of **them.**”

### II.

The Court erred in giving to the jury the instruction reading as follows:

“It stands without contradiction that distilling apparatus was there, that liquor was distilled and that mash was made there. [107] And, of course, without any bond and in a place other than an authorized distillery. I cannot see how under the law anyone could be guilty of any one of these counts without being guilty of all.”

### III.

The Court erred in giving to the jury the instruction reading as follows:

“When you have considered all that, if you find a persistent judgment to a very high degree of probability the defendants are not guilty as charged, you have a reasonable doubt, and it would be your duty to acquit them, or any one of them in which that is your frame of mind.”



IV.

The Court erred in giving to the jury the instruction reading as follows:

“On the other hand, after you have given that full value to all the evidence, if you have a judgment to a high degree of probability the defendant is guilty as charged, you have no reasonable doubt and you would convict him.”

V.

The Court erred in giving to the jury the instruction reading as follows:

“There is a rule of law that if a witness testifies falsely before you in any one particular, it is your duty to mistrust all the balance of his testimony, and if your judgment approves you may reject it all as unworthy of credit, because the law goes on the theory that you might well say that if a witness testified falsely in one particular under oath, how can I determine he will not adhere to his conduct in other particulars? That is a matter for the jury to determine entirely. There is also a rule of law that a witness who thus testifies falsely in one particular may have [108] testified falsely in all, and the jury views his testimony with caution.”

VI.

The Court erred in giving to the jury the instruction reading as follows:

“The first count is that the defendants conspired together and with other persons to vio-

late the National Prohibition Act. That is to say, to manufacture intoxicating liquor out on this particular farm. They are not charged, remember, with violating the National Prohibition Act. That is not what is being tried, but conspiring together to do so. Of course, the National Prohibition Act was really violated by somebody, but that is not the charge here.”

#### VII.

The Court erred in giving to the jury the following instruction:

“Now, in this case, this manufacture of liquor out in this place was clearly unlawful. If these defendants associated themselves together to manufacture that liquor, which is unlawful, then they were engaged in a conspiracy as charged.”

#### VIII.

The Court erred in giving to the jury the instruction reading as follows:

“So in this case there must have been an understanding or agreement between these parties that this unlawful business would be carried on by them.”

#### IX.

The Court erred in giving to the jury the instruction reading as follows:

“So it might be said right here that if some of these defendants established this distillery out upon this West farm and [109] at the last minute when the news got out, if it did,

that the Government had discovered it and was about to destroy it—anyone who engaged with the original conspirators to help them to remove and save the appliances and instrumentalities to the end that they might be set up and the business continued some *here* else, would be just as guilty of the whole conspiracy as though he had been in from the beginning, and had a part in setting up the plant in the first instance.”

## X.

The Court erred in giving to the jury the instruction reading as follows:

“But the significant fact is that the license of the car that Boskotceh purchased was taken out in the name of Boskovich and sent to Boskoyceh’s house.”

## XI.

The Court erred in giving to the jury the instruction reading as follows:

“There was *obe* element of the case that I did want to come back to, and that is with reference to a conspiracy. I said a man who comes in late is just as guilty as a man who comes in early. There are some circumstances which the Government contends do tend to show acquaintance between Boskoyceh and Cvitkovic, Boskovich and Janders before the time of the raid. But regardless of that, suppose that there is no evidence that Jandrilovich, Sbaljak and Boskoyceh ever had anything to do with it before the day of the raid; if Sabljak

went there with his truck that morning with the intent and for the purpose and with the understanding with some of these parties he was going there for the purpose of helping to remove the still, the instrumentality set up there by someone else, then he was furthering the objects of their conspiracy and just as guilty as if *hr* proceeded from the beginning. [110]

“So in reference to Boskoyceh and Janders, who were on this farm that morning, if they had nothing to do with it before, but went there that morning for the purpose of aiding in dismantling and removing these appliances to the end that the business might be carried on somewhere else, why, they became then and there a part of the conspiracy and just as guilty as though they had a part in it from the beginning.”

## XII.

The Court erred in the following proceedings during the trial of said cause:

The jury, after deliberating, *tr*turned into court and the following took place:

The COURT.—I see there are only two counts covered by this verdict, and there are three in the indictment.

The FOREMAN OF THE JURY.—That matter was mentioned in the jury-room.

The COURT.—It was an oversight. I take it that under the instructions you would find the same verdict as to the third count, as you would the first two.

The FOREMAN.—Yes, your Honor.

The COURT.—Do all the jurors agree with that?

All jurors answer “yes.”

The COURT.—Well, the foreman will write in the third court of the verdict, finding those guilty that you have found guilty on Counts I and II, and finding those not guilty that you have found not guilty on Counts I and II.

The foreman does the same.

### XIII.

The Court erred in refusing to give to the jury the instruction requested by defendants reading as follows:

“On Count II all of the defendants are charged with carrying on the business of a distiller of spirits without having [111] given bond as required by law. It is conceded that no bond was given, so the question for you to decide is, whether the evidence shows beyond a reasonable doubt that the defendants, either all or some of them, were carrying on the business of a distiller of spirits. Under this count none of the defendants would be guilty unless the evidence shows to your satisfaction beyond a reasonable doubt that the defendant was the proprietor or had an interest in the distillery. A person employed as a laborer in carrying on the work of distilling cannot be said in law to be carrying on the business. It is only the proprietor or owner who is required by law to give

the bond and consequently he is the only person who is guilty. None of the defendants could be convicted under this court unless as to the defendant convicted you should find beyond any reasonable doubt that he has a proprietary interest in the still. That is, that he occupied some such relation to it, as one who was in partnership with the owner, or any other proprietary relationship. If after considering all the evidence you should be satisfied beyond a reasonable doubt that any of the defendants were employed for wages or any other compensation in the conduct of such still, but are not further convinced beyond a reasonable doubt that such defendant was the owner or proprietor of the still, then you must find such defendant not guilty.”

#### XIV.

The Court erred in refusing to give to the jury the instruction requested by defendants reading as follows:

“I instruct you that under the second count no person can be found guilty except such person as an owner or who has an owner’s interest in the distillery. The statute does not include within its provisions laborers or employees of the owner.”

#### XV.

The Court erred in refusing to give to the jury defendants’ [112] requested instruction reading as follows:

“I instruct you that no person could be guilty of conspiracy unless he entered into a formal agreement to violate the law, or unless he did some act towards accomplishing a violation of the law. He does not have to do both, but he has to do one of the two.”

#### XVI.

The Court erred in refusing to give to the jury the instruction requested by defendants reading as follows:

“I instruct you that if Joe Sweet, the owner of the land, should have found out after the land was leased and occupancy was taken of it that a distillery was being operated upon the land, the fact that he had such knowledge would not make him guilty of conspiracy unless at the time he entered into the lease he had such knowledge. In other words, a person who owns a building and rents it to another, with no knowledge that the other is going to maintain a still on it, but after the other had been on it for some period of time finds out that a still is being maintained upon it and he does not oust the other but continues to rent the premises to him, does not become guilty of conspiracy with the proprietor of the still.”

#### XVII.

The Court erred in refusing to give to the jury the instruction requested by defendants reading as follows:

“I instruct you that a landlord must not only have knowledge that a distillery is being operated upon his premises, but after he obtains the knowledge or notice a reasonable time must have elapsed for him to reach his tenant and insist upon the vacation of the premises or absolute cessation of the illicit business before he in law becomes criminally responsible or before he could become an aider or abettor in the crime.” [113]

### XVIII.

The Court erred in refusing to give to the jury the instruction requested by defendants reading as follows:

“I instruct you that as to Count II the defendant Joe Sweet could not be convicted under that count if all the relation he bore to the operation of the still or distillery was that he owned the land upon which it was situated and had leased it to others. This would be true because no one is guilty under this statute except the owner of the distillery, because it is he alone who is required to furnish the bond. No one could be guilty under that count except such person or persons as are required to furnish a bond.”

### XIX.

The Court erred in refusing to give to the jury the instruction requested by the defendants reading as follows:

“As to Count III, I instruct you that you can find none of the defendants guilty unless you



should find beyond a reasonable doubt that such defendant actually made and fermented some of the mash therein described, or that he aided and abetted, hired or encouraged others to make it.”

XX.

The Court erred in refusing to pass sentence on each count separately.

XXI.

The Court erred in refusing to admit in evidence Defendants' Exhibit 19, offered by defendants, the testimony relating thereto reading as follows:

Q. They said you had on a new pair of shoes. How about that?

A. I guess they weren't so new. I bought them the Fourth of July or something—on the 28th or 29th of June, the 28th.

Q. Of the prior year? A. 1928, yes. [114]

Q. You bought them for the Fourth of July?

A. Yes.

Q. Where did you buy them?

Mr. SAVAGE.—I object to counsel testifying.

Mr. DORE.—I am not testifying. I asked where he bought them.

The COURT.—Proceed.

Q. Where did you buy them?

A. I bought them at Issaquah.

Q. How much did you pay for them?

A. Three and one-half.

Mr. SHERWOOD.—I think that is immaterial.

The COURT.—Not too much detail, Counsel.

Q. Have you the shoes with you?

A. Yes, I have.

Q. Did you wear the shoes from the time you bought them?     A. Yes.

Q. From what time had you worn them to this time?

Mr. DORE.—I offer these in evidence.

A. Since I was arrested I didn't wear them.

Mr. SHERWOOD.—I object, your Honor on the ground there is no showing these are the same shoes, and that they are in the same condition they were in on March twelfth.

Mr. DORE.—He testified he wore them from June 28th to March 12th.

The COURT.—Let us see if he has worn them since or not.

Q. How long did you wear these shoes?

A. I wore them practically every day after I bought them. It is only once a year I buy a pair of shoes. I wore those Sunday shoes—

Q. You buy a pair of shoes once a year?

A. I buy a pair of shoes once a year.

Q. When did you buy these shoes you have on now? [115]

A. I buy them at J. C. Penney's store down at Renton.

Q. When?

A. For the fourth of July this year.

Q. That is the way you celebrate the Fourth?

A. That is the way I celebrate the Fourth.

The COURT.—Objection sustained. Proceed.

Mr. DORE.—To the shoes that are marked?

The COURT.—Yes.

(Shoes above referred to marked Defendants' Exhibit 19 offered and refused.)

## XXII.

Thereafter, within the time limited by law and the order and rules of this court, said defendants moved for a new trial, which said motion was overruled by the Court, and an exception allowed, which ruling of the Court the defendants now assign as error.

## XXIII.

And the Court thereafter entered judgment and sentence against said defendants, upon the verdict of guilty rendered upon said indictment, to which ruling and judgment and sentence the defendants excepted, and now the defendants assign as error that the Court so entered judgment and sentence upon the verdict.

And as to each and every of said assignments of error, as aforesaid, the defendants say that the time of making of the order or ruling of the court complained of, the defendants duly excepted and were allowed an exception wherever the same appears in the record to the ruling and order of the Court.

JOHN F. DORE,  
FRED C. BROWN,  
Attorneys for Defendants.

Received a copy of the within assignment of errors this 25 day of Nov., 1929.

ANTHONY SAVAGE,  
Attorney for Pltff.

[Endorsed]: Filed Nov. 25, 1929. [116]

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[Title of Court and Cause.]

### ORDER ALLOWING APPEAL.

An appeal is granted on this 25 day of November, 1929, and it is further ordered that, pending the review of said cause the defendants, J. S. Cvitkovic, Martin Boskovich, Nikola Jandrilovich, and Martin Boskoyceh, be admitted to bail and that the amount of the supersedeas bonds to be filed by said defendants be in the following amounts: The said J. S. Cvitkovic, \$3,500.00; the said Martin Boskivich, \$2,500.00; the said Nikola Jandrilovich, \$2,500.00; the said Martin Boskoyceh, \$2,500.00.

And it is further ordered that, upon each of the said defendant's filing his bond in the aforesaid respective sums, to be approved by the Clerk of this court, they shall be released from custody pending the determination of the appeal herein assigned.

Done in open court this 25 day of November, 1929.

BOURQUIN,  
Judge.

[Endorsed]: Received a copy of the within order this 25 day of Nov., 1929.

ANTHONY SAVAGE,  
Attorney for Pltff.

O. K.—CAMERON SHERWOOD,  
Asst. U. S. Atty.

[Endorsed]: Filed Nov. 25, 1929. [117]

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[Title of Court and Cause.]

BOND ON APPEAL (MARTIN BOSKOVICH).

KNOW ALL MEN BY THESE PRESENTS, that we, Martin Boskovich, as principal, and the American Bonding Company of Baltimore, as surety, jointly and severally acknowledge ourselves to be indebted to the United States of America in the sum of Twenty-Five Hundred and no/100ths Dollars (\$2500.00), lawful money of the United States, to be levied on our goods and chattels, lands and tenements, upon the following conditions:

The condition of this obligation is such, that WHEREAS, the above-named defendant Martin Boskovich was on the 3d day of October, 1929, sentenced in the above-entitled court as follows: Thirteen (13) Months in the U. S. Penitentiary at McNeil's Island and a fine of One Thousand Dollars (\$1,000.00) and costs:

AND WHEREAS, said defendant has sued out a writ of error to the Circuit Court of Appeals of

the United States for the Ninth Circuit to review said judgment;

AND WHEREAS, the above-entitled court has fixed the defendant's bond to stay execution of said judgment in the amount of Twenty-five Hundred and no/100ths Dollars (\$2,500.00),—

NOW, THEREFORE, if the said defendant Martin Boskovich pays the fine and costs and shall diligently prosecute said writ of error and shall render himself amenable to all orders which said Circuit Court of Appeals shall make or order to be made in the premises, and to all process issued or ordered to be issued by said Circuit Court of Appeals, and shall not leave jurisdiction of this court without permission being first granted and shall render himself amenable to any and all orders made or entered by the District Court of the United States for the Western District of Washington, Northern Division, then this obligation shall be void; otherwise to remain in full force and effect.

MARTIN BOSKOVICH,

Principal.

AMERICAN BONDING COMPANY OF  
BALTIMORE.

By B. L. BURROUGHS, (Seal)

Attorney-in-fact.

Approved as to surety Nov., 12th, 1929.

[Seal]

H. S. ELLIOTT,

U. S. Commissioner.

O. K.—CAMERON SHERWOOD,

Asst. U. S. Atty.

[Endorsed]: Filed Nov. 25, 1929. [118]

[Title of Court and Cause.]

BOND ON APPEAL (JOE CVITKOVIC).

KNOW ALL MEN BY THESE PRESENTS, that we, Joe Cvitkovic, as principal, and the American Bonding Company of Baltimore, as surety, jointly and severally acknowledge ourselves to be indebted to the United States of America in the sum of Thirty-five Hundred and no/100ths Dollars (\$3,500.00), lawful money of the United States, to be levied on our goods and chattels, land and tenements, upon the following conditions:

The condition of this obligation is such, that WHEREAS, the above-named defendant Joe Cvitkovic was on the 3d day of October, 1929, sentenced in the above-entitled court as follows: Eighteen (18) months in the U. S. Penitentiary at McNeil's Island and a fine of Fifteen Hundred Dollars (\$1,500.00) and costs;

AND WHEREAS, said defendant has sued out a writ of error to the Circuit Court of Appeals of the United States for the Ninth Circuit to review said judgment;

AND WHEREAS, the above-entitled court, has fixed the defendant's bond to stay execution of said judgment in the amount of Thirty-five Hundred and no/100ths Dollars (\$3,500.00),—

NOW, THEREFORE, if the said defendant Joe Cvitkovic pays the fine and costs and shall diligently prosecute said writ of error and shall render him-

self amenable to all orders which said Circuit Court of Appeals shall make or order to be made in the premises, and to all process issued or ordered to be issued by said Circuit Court of Appeals, and shall not leave jurisdiction of this court without permission being first granted and shall render himself amenable to any and all orders made or entered by the District Court of the United States for the Western District of Washington, Northern Division, then this obligation shall be void; otherwise to remain in full force and effect.

JOE CVITKOVIC,

Principal.

AMERICAN BONDING COMPANY OF  
BALTIMORE.

By B. L. BURROUGHS, (Seal)

Attorney-in-fact.

Approved as to surety Nov., 12th, 1929.

[Seal]

H. S. ELLIOTT,

U. S. Commissioner.

O. K.—CAMERON SHERWOOD,

Asst. U. S. Atty.

[Endorsed]: Filed Nov. 25, 1929. [119]

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[Title of Court and Cause.]

BOND ON APPEAL (MARTIN BOSKOYCEK).

KNOW ALL MEN BY THESE PRESENTS,  
that we, Martin Boskoycek, as principal, and the



American Bonding Company of Baltimore, as surety, jointly and severally acknowledge ourselves to be indebted to the United States of America in the sum of Twenty-five Hundred and no/100ths Dollars (\$ ——), lawful money of the United States, to be levied on our goods and chattels, land and tenements, upon the following conditions:

The condition of this obligation is such, that WHEREAS, the above-named defendant Martin Boskoycek was on the 3d day of October, 1929, sentenced in the above-entitled court as follows: Thirteen (13) months in the U. S. Penitentiary at McNeil's Island and a fine of One Thousand Dollars (\$1,000.00) and costs;

AND WHEREAS, said defendant has sued out a writ of error to the Circuit Court of Appeals of the United States for the Ninth Circuit to review said judgment;

AND WHEREAS, the above-entitled court has fixed the defendant's bond to stay execution of said judgment in the amount of Twenty-five Hundred and no/100ths Dollars (\$2,500.00),—

NOW, THEREFORE, if the said defendant, Martin Boskoycek, pays the fine and costs and shall diligently prosecute said writ of error and shall render himself amenable to all orders which said Circuit Court of Appeals shall make or order to be made in the premises, and to all process issued or ordered to be issued by said Circuit Court of Appeals, and shall not leave jurisdiction of this court without permission being first granted and shall render himself amenable to any and all orders made

or entered by the District Court of the United States for the Western District of Washington, Northern Division, then this obligation shall be void, otherwise to remain in full force and effect.

MARTIN BOSKOYCEK,  
AMERICAN BONDING COMPANY OF  
BALTIMORE.

By B. L. BURROUGHS, (Seal)  
Attorney-in-fact.

Approved as to surety Nov. 12th, 1929.

[Seal] H. S. ELLIOTT,  
U. S. Commissioner.

O. K.—CAMERON SHERWOOD,  
Asst. U. S. Atty.

[Endorsed]: Filed Nov. 25, 1929. [120]

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[Title of Court and Cause.]

BOND ON APPEAL (NIKOLA JANDRILOVICH).

KNOW ALL MEN BY THESE PRESENTS, that we, Nikola Jandrilovich, as principal, and the American Bonding Company of Baltimore, as surety, jointly and severally acknowledge ourselves to be indebted to the United States of America in the sum of Twenty-five Hundred and no/100ths Dollars (\$2,500.00), lawful money of the United States, to be levied on our goods and chattels, land and tenements, upon the following conditions:

The condition of this obligation is such, that WHEREAS, the above-named defendant Nikola Jandrilovich was on the 3d day of October, 1929, sentenced in the above-entitled court as follows: Thirteen (13) months in the U. S. Penitentiary at McNeil's Island and a fine of One Thousand Dollars (\$1,000.00) and costs;

AND WHEREAS, said defendant has sued out a writ of error to the Circuit Court of Appeals of the United States for the Ninth Circuit to review said judgment;

AND WHEREAS, the above-entitled court has fixed the defendant's bond to stay execution of said judgment in the amount of Twenty-five Hundred and no/100ths Dollars (\$2,500.00),—

NOW, THEREFORE, if the said defendant Nikola Jandrilovich pays the fine and costs and shall diligently prosecute said writ of error and shall render himself amenable to all orders which said Circuit Court of Appeals shall make or order to be made in the premises, and to all process issued or ordered to be issued by said Circuit Court of Appeals, and shall not leave jurisdiction of this court without permission being first granted and shall render himself amenable to any and all orders made or entered by the District Court of the United States for the Western District of Washington,

Northern Division, then this obligation shall be void, otherwise to remain in full force and effect.

NIKOLA JANDRILOVICH,

Principal.

AMERICAN BONDING COMPANY OF  
BALTIMORE.

By B. L. BURROUGHS, (Seal)

Attorney-in-fact.

Approved as to surety Nov. 12th, 1929.

[Seal]

H. S. ELLIOTT,

U. S. Commissioner.

O. K.—CAMERON SHERWOOD,

Asst. U. S. Atty.

[Endorsed]: Filed Nov. 25, 1929. [121]

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[Title of Court and Cause.]

PRAECIPE FOR TRANSCRIPT OF RECORD.

To the Clerk of the Above-entitled Court:

You will please prepare the record on appeal in the above-entitled cause, and include therein the following:

1. Indictment.
2. Plea.
3. Verdict.
4. Judgment and sentence.
5. Motion for new trial.
6. Order denying motion for new trial (minute entry).

7. Bill of exceptions.
8. Assignment of error.
9. Notice of appeal.
10. Petition for appeal.
11. Order allowing appeal and fixing amount of bonds.
12. Bonds on appeal (4).
13. Citation.
14. Praeceptum.

JOHN F. DORE.

FRED C. BROWN.

[Endorsed]: Filed Dec. 11, 1929. [122]

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[Title of Court and Cause.]

CERTIFICATE OF CLERK U. S. DISTRICT  
COURT TO TRANSCRIPT OF RECORD.

United States of America,  
Western District of Washington,—ss.

I, Ed. M. Lakin, Clerk of the United States District Court for the Western District of Washington, do hereby certify this typewritten transcript of record, consisting of pages numbered from 1 to 121, inclusive, to be a full, true, correct and complete copy of so much of the record, papers and other proceedings in the above and foregoing entitled cause, as is required by praecipe of counsel, filed and shown herein, as the same remain of record and on file in the office of the Clerk of said District Court, and that the same constitute the record on

appeal herein from the judgment of the said United States District Court for the Western District of Washington to the United States Circuit Court of Appeals for the Ninth Circuit.

I further certify the following to be a full, true and correct statement of all expenses, costs, fees and charges incurred in my office by or on behalf of the appellant herein, for making record, certificate or return to the United States Circuit Court of Appeals for the Ninth Circuit in the above-entitled cause, to wit: [123]

Clerk's fees (Act Feb. 1, 1925) for making record, certificate or return, 323 folios at 15¢.....	\$48.45
Appeal fee (Sec. 5 of Act).....	5.00
Certificate of Clerk to Transcript of Record, with seal .....	.50
	<hr/>
Total.....	\$53.95

I hereby certify that the above cost for preparing and certifying record, amounting to \$53.95, has been paid to me by the attorneys for the appellants.

I further certify that I herewith transmit the original citation issued in the above-entitled cause.

IN WITNESS WHEREOF I have hereunto set my hand and affixed the official seal of said District Court at Seattle, in said District, this 23d day of December, 1929.

[Seal]

ED. M. LAKIN,  
Clerk.

By S. E. Leitch,  
Deputy. [124]

[Title of Court and Cause.]

CITATION ON APPEAL.

United States of America,—ss.

The President of the United States of America to the United States of America, and to ANTHONY SAVAGE, United States Attorney for the Western District of Washington, Northern Division, GREETING:

You are hereby cited and admonished to be and appear before the United States Circuit Court of Appeals for the Ninth Circuit, at San Francisco, in the State of California, within thirty days from the date hereof, pursuant to an order allowing appeal, filed in the Clerk's office of the District Court of the United States for the Western District of Washington, Northern Division, wherein the said J. S. Cvitkovic and Martin Boskivich, Nikola Jandrilo- vich and Martin Boskoyceh are appellants and the United States of America is respondent, to show cause, if any there be, why judgment in the said order of appeal mentioned should not be corrected and speedy justice done to the parties in that be- half.

WITNESS the Honorable GEORGE M. BOUR- QUIN, Judge of the District Court of the United

States for the Western District of Washington,  
Northern Division, this 25 day of November, 1929.

BOURQUIN,

United States District Judge.

[Seal]

Attest: S. E. LEITCH,

Deputy Clerk of the District Court of the United  
States for the Western District of Washington,  
Northern Division.

Received a copy of the within citation this 25 day  
of Nov., 1929.

ANTHONY SAVAGE,

Attorney for Pltff.

Filed Nov. 25, 1929. [125]

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[Endorsed]: No. 6041. United States Circuit  
Court of Appeals for the Ninth Circuit. J. S. Cvit-  
kovic and Martin Boskivich, Nikola Jandrilovich  
and Martin Boskoyceh, Appellants, vs. United  
States of America, Appellee. Transcript of Rec-  
ord. Upon Appeal from the United States District  
Court for the Western District of Washington,  
Northern Division.

Filed January 13, 1930.

PAUL P. O'BRIEN,

Clerk of the United States Circuit Court of Appeals  
for the Ninth Circuit.